

1 JOEL S. MILIBAND, #77438  
jmiliband@rusmiliband.com  
2 LAUREL R. ZAESKE, #138510  
lzaeske@rusmiliband.com  
3 SARA A. MAUNDER, #238104  
smaunder@rusmiliband.com  
4 RUS, MILIBAND & SMITH  
A Professional Corporation  
5 Seventh Floor  
2211 Michelson Drive  
6 Irvine, California 92612  
Telephone: (949) 752-7100  
7 Facsimile: (949) 252-1514

8 Attorneys for Chapter 7 Trustee,  
HELEN RYAN FRAZER  
9

10

UNITED STATES BANKRUPTCY COURT

11

CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

12

In re: ) Case No. LA05-28700 AA  
13 )  
14 STOCKWELL PROPERTIES, LLC, ) Chapter 7  
15 )  
16 Debtor. )  
17 )  
18 )  
19 )  
20 )  
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28 )  
\_\_\_\_\_  
MOTION FOR ORDER  
DISALLOWING CLAIM NUMBER 25  
FILED BY MARLENE M. COLUCCI;  
DECLARATION OF HELEN R.  
FRAZER, ALAN L. KAHN, AND  
LAUREL R. ZAESKE IN SUPPORT  
THEREOF

Date: November 3, 2010  
Time: 10:30 a.m.  
Ctrm: 1375

1 TO THE HONORABLE ALAN M. AHART, UNITED STATES BANKRUPTCY COURT  
2 JUDGE, CLAIMANT AND OTHER INTERESTED PARTIES:

3 Helen Ryan Frazer, the duly appointed and acting Chapter 7 Trustee ("Trustee") of  
4 the Estate ("Estate") of Stockwell Properties, LLC (the "Debtor" and "Stockwell") hereby objects  
5 to allowance of **Claim No. 25** filed by **Marlene M. Colucci** ("Mrs. Colucci" and/or "Claimant"),  
6 in the amount of **\$600,000.00**, which was filed on **December 18, 2006** ("Claim"). The Trustee  
7 objects to the Claim pursuant to 11 U.S.C. §§502(b) and Rule 3007 of the Federal Rules of  
8 Bankruptcy Procedure on the grounds that: (1) the Claim is not supported by facts or evidence of  
9 a claim against the Debtor; and (2) the Debtor's books and records do not reflect that any  
10 obligation is owed to the Claimant.

11 1. OVERVIEW OF RELEVANT FACTS

12 On August 17, 2005, an involuntary petition was filed against Stockwell under  
13 Chapter 11 of Title 11 of the United States Code ("Bankruptcy Code"). In December 2005, the  
14 Court entered an Order authorizing the appointment of an interim Chapter 11 trustee.  
15 On December 16, 2005, Helen Ryan Frazer was appointed the interim trustee. On April 26,  
16 2006, the Court entered an order for relief. On August 4, 2006, the Court ordered the case  
17 converted to Chapter 7 (the "Bankruptcy Case"). Helen Ryan Frazer is the Chapter 7 trustee.  
18 The Court established February 26, 2007 as the claims bar date in the within proceeding.

19 Stockwell was formed for the purpose of purchasing and selling residential real  
20 property.<sup>1/</sup> At the time of the bankruptcy filing, Stockwell owned two residential properties  
21 commonly referred to as the Wallingford Property and the Brunston Court Property. The  
22 Debtor's books and records reflect that substantially all of the business of the Debtor related to  
23 maintaining and remodeling the real property owned by the Debtor.

24 The Trustee has reviewed the Proofs of Claims filed in this case as provided for  
25 under Bankruptcy Code §704 and has had her accountants review the books and records of the  
26 Debtor. The Trustee's review of the Claim filed by Mrs. Colucci indicated that the

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27  
28 <sup>1/</sup> See, Rule 2004 Examination of Curtis Somoza, taken October 12, 2005 ("Somoza Depo.") at 13:8 to  
14:7. The portion of the Somoza Depo. referenced in the Motion are collectively attached as Exhibit "1."

1 documentation attached to the Proof of Claim was incomplete and did not support the Claim.  
2 Among other things, one or more pages of the referenced Promissory Note was not included  
3 (which would identify the maker, the payee, the amount or the date of the Promissory Note) and  
4 the attached Deed of Trust was dated four (4) months after the date the debt was purportedly  
5 incurred and the same day that the Bankruptcy Case was filed.<sup>2/</sup>

6 The Trustee's accountants review of the available books and records of the Debtor  
7 did not identify any receipts in April 2005 in the amount of the Claim. See, attached Declaration  
8 of Alan L. Kahn.

9 On April 9, 2010, counsel for the Trustee sent a letter to Mrs. Colucci advising her  
10 that the Stockwell banking records do not reflect that Stockwell received \$600,000  
11 from her on April 30, 2005, as reflected in the Claim, and requesting additional support that the  
12 funds were actually advanced to, or for the benefit of, Stockwell.<sup>3/</sup>

13 On April 23, 2010, counsel for the Trustee received a letter from Stanley  
14 Samorajczyk, counsel for Mrs. Colucci, advising that additional support would be forthcoming.<sup>4/</sup>  
15 On May 3, 2010, counsel for Trustee attempted to contact Mr. Samorajczyk by telephone to  
16 inquire about the status of the additional documentation, and was advised by the receptionist that  
17 Mr. Samorajczyk was no longer with the firm. Counsel for the Trustee left a message requesting  
18 a return call from a representative from Akin Gump, but the call was never returned.

19 On November 16, 2009, the Trustee received an e-mail from Michele Colucci, on  
20 behalf of her mother, Mrs. Colucci, stating, among other things, that the funds had been paid to  
21 and/or invested with Ari Zieger, Michele Colucci's ex husband.<sup>5/</sup>

22 On November 18, 2009, counsel for the Trustee sent an e-mail to Michele Colucci

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24       <sup>2/</sup> A true and correct copy of the Claim is attached as Exhibit "2."

25       <sup>3/</sup> A true and correct copy of the April 9, 2008 letter from Laurel Zaeske to Marlene Colucci, without  
enclosure, is attached as Exhibit "3."

26       <sup>4/</sup> A true and correct copy of the April 23, 2008 letter from Stanley Samorajczyk to Laurel Zaeske is  
attached as Exhibit "4."

28       <sup>5/</sup> A true and correct copy of Michele Colucci's e-mail to the Trustee dated November 16, 2009 is attached  
as Exhibit "5."

1 requesting a return call and advising Michele of the claims filed by Mrs. Colucci and Ari Zieger.<sup>6/</sup>  
2 There was no further communication from Michele Colucci.

3 In or about June 2010, counsel for the Trustee again contacted Akin Gump  
4 requesting additional support for the Claim. On June 9, 2010, Brian Rothschild sent a letter to  
5 counsel for the Trustee (the “Rothschild Letter”) providing, among other things, a complete copy  
6 of the Promissory Note, and contending that the claim was supported by the recorded Deed of  
7 Trust and testimony of the Debtor’s principal, Curtis Somoza.<sup>7/</sup>

8 On June 10, 2010, counsel for the Trustee wrote to Mr. Rothschild requesting  
9 documentation for proof of payment of the funds purportedly giving rise to the Claim.<sup>8/</sup> There has  
10 been no response to the June 10, 2010 e-mail from Mrs. Colucci or her counsel.

11 2. OBJECTIONS TO CLAIM

12 A. The Claim Does Not Set Forth Sufficient Facts Or Evidence Supporting A Claim  
13 Against The Debtor

14 A Proof of Claim must set forth facts or evidence necessary to support a claim.  
15 Bankruptcy Rule 3001(c) states in relevant part:

16 When a claim, or an interest in property of the  
17 debtor securing the claim, is based on a writing, the  
original or duplicate shall be filed with proof of  
claim. If the writing has been lost or destroyed, a  
statement of the circumstances of the loss or  
destruction shall be filed with the claim.

20 A claimant must attach all necessary supporting documents to obtain prima facie validity under  
21 Rule 3001. *In re All American Auxiliary Association*, 95 Bankr. 540, 545 (Bankr. S.D. Ohio  
22 1989). Treating a claim that lacks the necessary support as valid can lead to abuses of the claims  
23 process. *Id.* at 545. *See also, Matter of Louie*, 10 Bankr. 928 (Bankr. E.D. Mich. 1981) [without

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24  
25 <sup>6/</sup> A true and correct copy of the November 18, 2009 e-mail from Laurel Zaeske to Michele Colucci, is  
attached as Exhibit “6.”

26 <sup>7/</sup> A true and correct copy of the June 9, 2010 e-mail from Brian Rothschild to Laurel Zaekse, with  
27 enclosures, is attached as Exhibit “7.”

28 <sup>8/</sup> A true and correct copy of the June 10, 2010 e-mail from Laurel Zaeske to Brian Rothschild is attached as  
Exhibit “8.”

1 the writing, the creditor's claim is defective, without being cured within the time allotted for  
2 filing, the claim is disallowed].

3 The documentation provided in support of the Claim at issue herein is incomplete  
4 and does not support a claim against the Debtor. The Trustee's efforts to obtain additional  
5 information similarly have not led to any evidence that Mrs. Colucci gave funds to or for the  
6 benefit of the Debtor. In fact, Michele Colucci's e-mail of November 18, 2009, states that the  
7 funds were given to Ari Zieger to invest, and not paid to Stockwell. See, Exhibit "6." The  
8 deposition testimony of Curtis Somoza attached to the Rothschild Letter similarly does not  
9 support the Claim. In the referenced testimony Mr. Somoza stated that he didn't recall the  
10 consideration given for the Colucci Deed of Trust,<sup>9</sup> and only recalled funds received from the  
11 Coluccis in November 2004, as part of a "friendly deal."

12 Mrs. Colucci has failed to present evidence to support a claim against the Debtor  
13 and the Claim should be disallowed.

14       B.     The Debtor's Books And Records Do Not Reflect An Obligation Owed To This  
15                   Claimant

16       Section 502(b)(1) of the Bankruptcy Code provides that a claim asserted in a proof  
17 of claim shall be allowed, except to the extent "such claim is unenforceable against the  
18 debtor and property of the debtor, under any agreement or applicable law." 11 U.S.C. §502(b)(1).

19       As discussed above, the Trustee's accountants have reviewed the books and  
20 records of the Debtor, including the banking records of the Debtor. The review of the Debtor's  
21 books and records did not indicate any business dealing between the Debtor and Mrs. Colucci or  
22 any obligation owed by the Debtor to Mrs. Colucci. Based upon the review of the Debtor's books  
23 and records and the facts described above, the Trustee does not believe Mrs. Colucci has an  
24 enforceable claim against the Debtor under any applicable law or agreement and, therefore, the  
25 Debtor is not liable for such Claim.

26  
27  
28       <sup>9</sup> The Brunston Court property reflected in the Deed of Trust was subsequently foreclosed on by the first  
lien holder.

1 3. CONCLUSION

2 The Trustee respectfully requests that the Court enter an Order disallowing the  
3 Claim in its entirety.

4

5 DATED: September 27, 2010

Respectfully submitted,

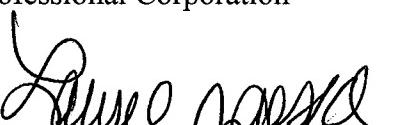
6

RUS, MILIBAND & SMITH  
A Professional Corporation

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By:

  
LAUREL R. ZAFESKE  
Attorneys for Chapter 7 Trustee,  
HELEN R. FRAZER

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1                   DECLARATION OF HELEN R. FRAZER

2                   I, HELEN R. FRAZER, declare as follows:

3                   1.       I am the duly appointed and acting Chapter 7 Trustee of the Estate of  
4 Stockwell Properties, LLC ( the "Debtor" and "Stockwell"). I also am an attorney duly  
5 licensed to practice before all federal and state courts in California. I have firsthand personal  
6 knowledge of the matters set forth herein and, if called upon as a witness, would and could  
7 competently testify thereto.

8                   2.       I make this declaration in support of my Motion For Order Disallowing  
9 Claim Number 25 Filed By Marlene M. Colucci ("Motion").

10                  3.       On August 17, 2005, an involuntary petition was filed against the Debtor  
11 under Chapter 11 of Title 11 of the United States Code. In December 2005, the Court entered  
12 an Order authorizing the appointment of an interim Chapter 11 trustee. On December 16,  
13 2005, I was appointed the interim trustee. On April 26, 2006, the Court entered an order for  
14 relief. On August 4, 2006, the Court ordered the case be converted to Chapter 7 (the  
15 "Bankruptcy Case"). I am currently serving as the Chapter 7 trustee in the Bankruptcy Case.

16                  4.       Attached hereto as Exhibit "1" are the portions of the Rule 2004  
17 Examination of Curtis Somoza, taken October 12, 2005 as referenced in the Motion.

18                  5.       I have reviewed all of the proofs of claim and the schedules filed in the  
19 Bankruptcy Case. The proof of claim filed by Marlene M. Colucci in the amount of  
20 \$600,000.00 ("Claim") does not contain sufficient supporting documentation relating to  
21 Stockwell. Among other things, the supporting documentation attached to the Claim is  
22 incomplete. A true and correct copy of the Claim is attached as Exhibit "2."

23                  6.       I asked my accountants, Crowe Horwath LLP (formerly Grobstein  
24 Horwath & Company LLP), to review the books and records of the Debtor, including the  
25 banking records of the Debtor, for any evidence that the Debtor had any business dealing with  
26 Mrs. Colucci. They have advised me that the Debtor's books and records do not indicate any  
27 business dealing between the Debtor and Mrs. Colucci or any obligation owed by the Debtor to  
28 Mrs. Colucci.

1           7. On November 16, 2009, I received an e-mail from Michele Colucci, on  
2 behalf of her mother, Mrs. Colucci, stating, among other things, that the funds had been paid to  
3 and/or invested with Ari Zieger, Michele Colucci's ex husband. A true and correct copy of  
4 Michele Colucci's November 16, 2009 e-mail is attached as Exhibit "S."

5           8. Based upon my review of the Claim, my accountant's review of the  
6 Debtor's books and records, and the information set forth in the Motion, I do not believe that  
7 Mrs. Colucci has an enforceable claim against the Debtor.

8 I declare under penalty of perjury under the laws of the State of California and  
9 the United States of America that the foregoing is true and correct. Executed on September 23  
10 2010, at Cerritos, California.

11  
12   
HELEN R. FRAZER

1                   DECLARATION OF ALAN L. KAHN

2                   I, ALAN L. KAHN, CPA, CIRA, CFF, declare as follows:

3                   1. I am a certified public accountant, duly licensed and authorized to  
4 practice accounting in the State of California, and am a Certified Insolvency and Restructuring  
5 Advisor ("CIRA"). I am a member in good standing of the American Institute of Certified  
6 Public Accountants (AICPA), and am a partner in the Insolvency and Litigation Department of  
7 Crowe Horwath LLP ("Crowe"), accountants for Helen R. Frazer ("Trustee"), the duly  
8 appointed and acting Chapter 7 Trustee of the Estate of Stockwell Properties, LLC (the  
9 "Debtor" and "Stockwell").

10                  2. I am the accountant at Crowe principally responsible for the services  
11 performed in the Stockwell bankruptcy case on behalf of the Trustee. The facts stated herein  
12 are within my personal knowledge or I have gained knowledge of them from Crowe staff  
13 members working under my supervision. If called upon as a witness, I would and could  
14 competently testify thereto.

15                  3. I make this declaration in support of the Trustee's Motion For Order  
16 Disallowing Claim Number 25 Filed By Marlene M. Colucci ("Motion").

17                  4. Crowe has undertaken a review of the books and records obtained from  
18 the Debtor, financial institutions, and third parties as part of the Trustee's efforts in the  
19 Stockwell bankruptcy case. These records include Stockwell's Accounts Payable Register for  
20 the period October 2004 through May 2005; Stockwell's Account Transaction Register for the  
21 period January 2004 through October 2004, and various bank statements of Stockwell and some  
22 corresponding disbursements and receipts for the period March 2003 through September 2005  
23 (collectively, the "Books and Records").

24                  5. Crowe has reviewed the Books and Records, for any evidence that the  
25 Debtor had any business dealing with the Claimant, Marlene M. Colucci.

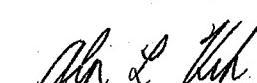
26                  ///

27                  ///

28                  ///

- 1 The Books and Records do not indicate any direct business dealings between the Debtor and
- 2 Mrs. Colucci or any obligation owed by the Debtor to Mrs. Colucci.

- 3 I declare under penalty of perjury under the laws of the State of California and
- 4 the United States of America that the foregoing is true and correct. Executed on September
- 5 23, 2010, at Sherman Oaks, California.

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8 ALAN L. KAHN  
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1                   DECLARATION OF LAUREL R. ZAESKE  
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3                   I, LAUREL R. ZAESKE, declare as follows:

4                   1. I am an attorney at law duly licensed to practice before the above-entitled  
5 Court and am a member of the law firm of Rus, Miliband & Smith, a Professional Corporation,  
6 attorneys of record for Helen R. Frazer, Chapter 7 Trustee ("Trustee") in the above-entitled  
7 action.

8                   2. I have firsthand personal knowledge of the matters set forth herein and if  
9 called upon as a witness to testify could and would competently thereto.

10                  3. I make this declaration in support of Trustee's Motion For Order  
11 Disallowing Claim Number 25 (\$600,000.00) Filed By Marlene M. Colucci ("Claimant").

12                  4. On April 9, 2010, I sent a letter to Mrs. Colucci advising her that the  
13 Stockwell banking records do not reflect that Stockwell received \$600,000 from her on April  
14 30, 2005, as reflected in the Claim, and requested additional support that the funds were  
15 actually advanced to, or for the benefit of, Stockwell. A true and correct copy of my April 9,  
16 2008 letter to Marlene Colucci, without enclosure, is attached as Exhibit "3."

17                  5. On April 23, 2010, I received a letter from Stanley Samorajczyk, counsel  
18 for Mrs. Colucci, advising that additional support would be forthcoming. A true and correct  
19 copy of the April 23, 2008 letter from Stanley Samorajczyk to me is attached as Exhibit "4."  
20 On May 3, 2010, I attempted to contact Mr. Samorajczyk by telephone to inquire about the  
21 status of the additional documentation, and was advised by the receptionist that  
22 Mr. Samorajczyk was no longer with the firm. I left a message requesting a return call from a  
23 representative from Akin Gump, but the call was never returned.

24                  6. In response to an e-mail from Michele Colucci to the Trustee, on  
25 November 18, 2009, I sent an e-mail to Michele Colucci requesting a return call and advising  
26 Michele of the claims filed by Mrs. Colucci and Ari Zieger. A true and correct copy of my  
27 November 18, 2009 e-mail to Michele Colucci is attached as Exhibit "6." There was no further  
28 communication from Michele Colucci.

1           7. In or about June 2010, I again contacted Akin Gump requesting additional  
2 support for the Claim. On June 9, 2010, Brian Rothschild sent a letter to me providing, among  
3 other things, a complete copy of the Promissory Note, and contending that the claim was  
4 supported by the recorded Deed of Trust and testimony of the Debtor's principal, Curtis  
5 Somoza. A true and correct copy of the June 9, 2010 e-mail from Brian Rothschild to me, with  
6 enclosures, is attached as Exhibit "7."

7           8. On June 10, 2010, I wrote to Mr. Rothschild requesting documentation  
8 for proof of payment of the funds purportedly giving rise to the Claim. A true and correct copy  
9 of my June 10, 2010 e-mail to Brian Rothschild is attached as Exhibit "8." There has been no  
10 response to my June 10, 2010 e-mail from Mrs. Colucci or her counsel.

11 I declare under penalty of perjury under the laws of the State of California that  
12 the foregoing is true and correct. This declaration was executed this 27 day of September,  
13 2010, at Irvine, California.

  
LAUREL R. ZAESKE

**“EXHIBIT 1”**

Somoza101205.txt  
1 UNITED STATES BANKRUPTCY COURT  
2 CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION  
3  
4  
5 In Re: Case No. LA 05-28700-AA  
6  
7 STOCKWELL PROPERTIES, LLC, Volume I  
8 (Pages 1 to 157)  
9  
10 Debtor:  
11

12  
13  
14  
15 RULE 2004 EXAMINATION  
16 CURTIS D. SOMOZA  
17 Wednesday, October 12, 2005  
18 Encino, California  
19  
20  
21  
22  
23

24 Reported by:  
25 CHERYL A. MARTIN  
CSR NO. 4974

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Page 1

1 MS. SOKOL: Yeah. Let's go off the record.

2 THE VIDEOGRAPHER: Off record at 10:59.

3 (Discussion off the record.)

4 THE VIDEOGRAPHER: On record at 11:01.

5 MS. SOKOL: Could we read back perhaps the last two  
6 questions.

7 MR. NAHMIAS: Sure.

8 (Record read as follows:

9 "How do you know Stockwell

10 Properties, sir?

11 "I formed Stockwell Properties

12 "And it's a limited liability  
13 corporation?

14 "Company.

15 "Company?

16 "Yes.

17 "Who are its members

18 "I don't know the answer to that.

19 "Are you one of its members?")

20 THE WITNESS: Can I go back and address those?

21 BY MR. NAHMIAS:

22 Q Please.

23 A I'm a managing member of the company personally.  
24 The units, the membership units, of LLC is held by my  
25 trust.

0 1 Q Are any of the units held by any other person or  
2 entity that you know of?

3 A Not that I know of.

4 Q So you believe your trust --

5 A I believe my trust owns 100 percent of the  
6 units.

7 Q Great. Thank you.

8 Do you recall when you formed Stockwell?

9 A Roughly?

10 Q Sure.

11 A I believe approximately three or four years ago.  
12 I don't exactly recall.

13 Q So 2001 to 2002?

14 A It would have been most likely 2002 because  
15 I think we only had a 2003 tax return. So we didn't  
16 actually place it in service -- or in business until  
17 2003. So it would have only been a few months prior that  
18 I formed it.

19 Q Very well.

20 What was the purpose for which it was formed?

21 A To purchase and resell properties.

22 Q Residential?

23 A Residential.

24 Q Does it, in fact, own residential properties as  
25 of today?

1 A Yes, it does.

2 Q Can you tell me how many and what the addresses  
3 of those properties are?

4 A Two properties. The first one being 3970  
5 Brunston Court, Westlake Village. The second one being  
6 2571 Wallingford Drive in Beverly Hills.

7 Q Very well.

8 I'm going to mark as exhibits -- I'll start with  
9 Exhibit 1 -- I hope I have enough copies for everybody --  
10 the Notice of Motion and Motion of Mr. Burtzloff to take  
11 the videotaped Examination of Stockwell Properties.  
12 Here's Exhibit 1.

13 (Whereupon Exhibit 1 was marked for  
14 identification and is attached hereto.)

15 BY MR. NAHMIAS:

16 Q Take a moment or two and review this, please.  
17 As you're reviewing it, have you seen that  
18 document before?

19 A I believe so.

20 Q Do you recall the first time you saw it?

21 A No, I don't.

22 Q Do you recall how you viewed it, in other words,  
23 how it was presented to you? Did you receive it in the  
24 mail?

25 A I don't recall. I believe I would have seen it

**“EXHIBIT 2”**

FORM B10 (Official Form 10) (Rev. 10/05)

UNITED STATES BANKRUPTCY COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA		PROOF OF CLAIM
Name of Debtor: <b>STOCKWELL PROPERTIES LLC</b>	Case Number: <b>05-28700</b>	THIS SPACE IS FOR COURT USE ONLY
<small>NOTE: This form should not be used to make a claim for compensation for services performed. A "Request for payment of an administrative expense" may be filed pursuant to 11 U.S.C. § 503.</small>		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <b>MARLENE M. COLUCCI</b>	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Name and address where notices should be sent: Marlene M. Colucci 4267 Marina City Drive, Unit 604/606 Marina Del Rey, California 90292	<b>FILED</b> <div style="border: 1px solid black; padding: 5px; text-align: center;"> <b>DEC 18 2006</b> </div> <div style="text-align: right; font-size: small;">           CLERK U.S. BANKRUPTCY COURT            CENTRAL DISTRICT OF CALIFORNIA            LOS ANGELES DIVISION         </div>	
Telephone number: 310-448-8118		
Last four digits of account or other number by which creditor identifies debtor:	Check here if <input type="checkbox"/> replaces or, <input type="checkbox"/> amends a previously filed claim, dated:	
1. Basis for Claim:	<input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other (Describe briefly): Promissory Note	
2. Date debt was incurred:	From _____ to _____ (date) (date)	
3. If court judgment, date obtained:		
4. Classification of Claim. Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time case filed.		
See reverse side for important explanations. <b>Unsecured Nonpriority Claim \$600,000 (plus interest)</b> <input checked="" type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.		
<b>Secured Claim</b> <input type="checkbox"/> Check this box if your claim is secured by collateral (including right of setoff) <b>Brief Description of Collateral:</b> <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other		
<b>Value of Collateral:</b> \$ _____ Amount of arrearage and other charges at time case filed included in secured claim above, if any \$ _____		
<input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use — 11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental units — 11 U.S.C. § 507(a)(8) <input type="checkbox"/> Other — Specify applicable paragraph of 11 U.S.C. § 507(a) _____		
<small>*Amounts are subject to adjustment on 4/1/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>		
5. Total Amount of Claim at Time Case Filed: Contingent/Unliquidated;	\$ _____	(unsecured) (secured) (priority) (Total)
6. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.	THIS SPACE IS FOR COURT USE ONLY	
7. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
8. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and a copy of this proof of claim.		
Date <i>Dec. 14, 2006</i>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach a copy of power of attorney, if any). By <i>Marlene M. Colucci</i> Marlene M. Colucci	
<small>Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.</small>		

indebtedness, or so much thereof as may remain unpaid at the time, plus any earned and accrued interest and any other monetary obligations then due and owing, shall, at the option of the Payee/Holder, become immediately all due and payable; and payment of said principal indebtedness, or the balance thereof, and all interest thereon, together with any and all other sums due under the terms of the Note and mortgage instrument, and/or any other instrument given as collateral security for the obligation evidenced by this Note may be enforced and recovered at once, it being understood and agreed that time and performance are expressly made of the essence.

**Interest on Default**

Should default be made in payment of any of the indebtedness evidenced hereby after the entire principal amount hereof shall have become due and payable, whether by acceleration, at maturity, or otherwise, the entire unpaid balance of that principal sum shall bear interest at the rate set forth in this note.

**Time of the Essence**

It is understood that time and all performances are expressly and specifically of the essence.

**Waiver Provisions**

The Maker, and any endorsers, guarantors, and/or sureties of this Note, and each of them, hereby waive diligence; demand; presentation for payment; notice of non-payment; dishonor; protest; and notice of any renewals or extensions of this Note, whether made to or in favor of the Maker, or any other person or persons. The pleading of any statute of limitations as a defense to any demand against the Maker, or any such endorsers, guarantors and/or sureties is expressly and specifically, knowingly and intelligently, voluntarily and explicitly waived by each and all of said parties, i.e. Maker, endorsers, guarantors and sureties.

Maker hereby expressly waives demand, presentation for payment, notice of dishonor, protest and notice of protest. This Note may not be changed or terminated, except by written agreement signed by the party against whom any enforcement of any change, modification, waiver or discharge is sought.

Wherever a waiver or release is given and/or provided by Maker in favor of Payee/Holder, it is understood that such waiver and/or release is given knowingly, voluntarily, intelligently, expressly and specifically and in the total absence of any fraud, mistake, coercion, undue influence, duress and/or confusion.

**Non-Waiver of Rights by Payee**

Neither (i) the failure of Payee/Holder hereof to exercise its rights to accelerate this Note when such option shall be come available, nor (ii) any delay or omission on the part of the Payee/Holder hereof in exercising any right hereunder or any of the agreements referred to herein shall operate or be construed, deemed or understood as a waiver of such option and right or of any such other right hereunder or under the mortgage instrument or under said agreement of any of them, or in event a default has not been cured prior to the time of exercise of any such right by the Payee/Holder hereof.

By accepting payment of any sum due hereunder after it is due and owing, the Payee/Holder hereof shall not be deemed, construed, interpreted and/or understood to have waived its rights to require prompt payment when due of any and all other sums hereunder or to declare an event of default as herein provided for failure to make prompt payment. No delay or omission on the part of the Payee/Holder hereof in exercising any right under this Note or mortgage instrument, or nay other agreement referred to herein shall operate or otherwise be construed, interpreted, understood or otherwise deemed as a waiver of any such right.

**Default Provisions**

Maker shall be deemed in default under the terms of this Note or mortgage instrument as referenced herein if any of the following events occur: (i) Maker fails to make any payment when due, (ii) Maker breaks any promise or breaches any covenant which Maker has made to Payee, or Maker fails to comply with or otherwise timely perform when due any other term, obligation, covenant, or condition contained in this Note, any mortgage instrument, or any other agreement related to this Note; (iii) Maker defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Maker's property or Maker's ability to repay this Note or perform Maker's obligations under this Note or any of the related documents as referenced herein, including any mortgage instrument; (iv) any representation or statement made or furnished to Payee by Maker or on Maker's behalf is false or misleading in any material respect, either now or at any time made or furnished; (v) Maker becomes insolvent, a Receiver is appointed for any part of Maker's property, Maker makes an assignment for the benefit of creditors, or any proceeding is commenced either by Maker or against Maker under any bankruptcy or insolvency laws; (vi) any creditor tries to take any of Maker's property on or in which Payee has a lien or security interest; (vii) a material adverse change occurs in Maker's financial condition; and (viii) any guarantor dies or any of the other events described in this default section occur with respect to any guarantor of this Note, provided, however, this "(viii)" provision shall not be applicable for purposes of declaring a default, breach, and/or nonperformance, should an on condition that within thirty (30) days of the death of any such guarantor the guarantor's personal representative, executor, or authorized representative of guarantor's estate delivers in writing to Payee/Holder notification unconditionally, absolutely, and irrevocably affirming, acknowledging, and agreeing that:

- (a) the Note, any mortgage instrument or other security instrument executed pursuant to the terms hereof for the benefit of Payee and its assigns and successors, as referenced, described, and/or set forth in this Note, are in full force and effect and constitute legal, valid, binding, and enforceable obligations of the guarantor and its assigns and successors in accordance with and pursuant to its respective terms per said Note, mortgage/security instrument(s) and to which enforcement may be sought pursuant to the applicable state laws;
- (b) there are no claims, counter claims, offsets, deductions, and/or defenses, or companion rights thereto, to the Maker's obligations as set forth in this Note and related mortgage/security documents;
- (c) any claim, right, and/or remedy on and/or to which a disaffirmance and/or rejection of this Note and any companion mortgage/security instruments and/or documents, and the underlying obligations relating thereto, are expressly, specifically, knowingly, and voluntarily waived, including a waiver of any unknown, unsuspected, and/or unforeseen aspects or claims concerning and/or as a consequence of such waiver pursuant to California Civil Code s1542;
- (d) any waivers given are understood to be unconditional, absolute, and irrevocable in all respects and shall be valid and legally binding the guarantor's estate and his representatives;

**Payees Remedies**

All rights and remedies under this Note and mortgage instrument are understood to and shall be cumulative in effect with all other rights and remedies Payee/Holder has or may have in law, at equity, by virtue of the mortgage or security instrument, or otherwise. Failure by Payee/Holder to exercise any right or remedy at any particular time shall not be deemed, construed, interpreted or understood as a waiver of any such right or remedy, or any other rights or remedies.

**Attorneys Fees**

In the event suit or action be instituted on this Note, or any attorney be employed or expenses be incurred to compel payment of this Note or any portion of the indebtedness evidenced hereby, or to defend the priority of the mortgage instrument, or as otherwise provided in the mortgage instrument, Maker promises and agrees to pay all such expenses and attorneys fees actually incurred by the Payee/Holder as a result thereof.

Notices

Except as otherwise provided to the contrary herein, any notice herein required or permitted to be given shall be done so in writing and may be personally served or sent by mail to the addresses, and if by mail, shall be deemed to have been given when deposited in the United States mail, registered or certified, return receipt requested, with postage prepaid and properly addressed. Any such notice transmitted through the U.S. Mail shall be deemed effective within three (3) business days of dispatch to the addressee. For the purposes hereof, the addresses of the Maker and Payee (until notice of a change thereof is given as provided in this specific subparagraph) shall be as follows:

If to Maker:

Stockwell Properties, LLC  
2934-1/2 Beverly Glen Circle  
#390  
Bel-Air, CA 90077

If to Payee:

Victor H. Colucci and Marlene M. Colucci  
4267 Marina City Drive  
#604/606  
Marina Del Rey, CA

Miscellaneous Provisions

Every provision in this Note is intended to be severable. In the event any provision of this Note shall be determined by a body of competent jurisdiction to be void, illegal, invalid, or unenforceable (collectively "Unenforceable"), the remaining terms and provisions of this Note shall not be affected thereby, and each of such remaining terms and provisions of this Note shall be valid and enforceable to the fullest extent permitted by law, unless a party demonstrates by a preponderance of the evidence that the Unenforceable provision was an essential economic or substantive and material term of this Note. This Note and its terms and any ambiguity which may exist or be discovered shall be equally and fairly interpreted by and between Maker and Payee and without reference to the party who prepared or caused to be prepared this Note. To the extend required, Maker hereby waives and releases any rights, privileges, benefits and/or claims under California Civil Code s1654 or any amended or successor statute thereto.

Allocation of Payments

Payments made per the terms of this Note shall be credited first to interest, then to principal, and then to any other costs, fees or expenses due and owing under this Note. Principal, interest, charges, costs and expenses are payable in lawful money fo the United States of America.

**Governing Law and Venue**

This Note has been delivered to Payee and accepted by Payee in the County of Los Angeles, State of California. This Note shall be governed by, construed and interpreted in accordance with California law. If a lawsuit is filed, Maker agrees upon Payee's request to submit to the jurisdiction of the Courts of Los Angeles County, State of California. Maker and Payee expressly and specifically waive the right to any jury trial in any action, proceeding, cross-complaint, or counter claim brought by either Payee or Maker against the other.

**Binding Effect**

The terms of this Note shall be binding upon, inure to the benefit and applied to all parties and their respective heirs, legatees, devisees, administrators, personal representatives, executors, successors in interest and assigns.

**Collateral Security Performances and Repayment**

This Note is secured by:

- (i) The above referenced mortgage instrument to and in favor of (title company), as Trustee, and recorded against that certain unimproved real property located in the County of (Ventura, California) commonly known as and located at 3970 Brunston Court, Thousand Oaks, CA 91362

STOCKWELL PROPERTIES, LLC



Curtis Sombra, Manager

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Victor H. Colucci  
Marlene M. Colucci  
4267 Marina City Drive, Unit 604/606  
Marina Del Rey, CA 90292

20050822-0208255  
Pages: 2 Fees: \$14.00  
08/22/2005 12:27:28 PM  
T200508221939 FO  
Ventura County Recorder  
Philip J. Schmit

SPACE ABOVE THIS LINE IS  
FOR RECORDER'S USE

DEED OF TRUST

This Deed Of Trust dated August 17, 2005 relates to Stockwell Properties, LLC, a California Limited Liability Company (herein called TRUSTOR, whose address are Stockwell Properties 3970 Brunston Court, Westlake Village, California 91362); Chicago Title Company (herein called TRUSTEE); and Victor H. Colucci and Marlene M. Colucci (herein called BENEFICIARY).

For the purpose of securing the Promissory Note dated April 30, 2005 in the amount of \$600,000, TRUSTOR grants to TRUSTEE in trust, with power of sale, the Property commonly known as 3970 Brunston Court, Westlake Village, County of Ventura, State of California, described as:

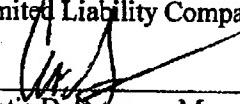
Lot 1 of Tract No. 4023, as per map recorded in Book 105, Page(s) 62-68 of Maps, in the Office of the County Recorder of Ventura County, State of California. Excepting therefrom all oil, gas and other hydrocarbon substances and other minerals lying below a depth of 500.00 feet with no rights of surface entry in said property.

In the event TRUSTOR sells the property described herein, all sums then owing under the Note secured hereby shall become immediately due and payable. Nothing in this instrument shall in any way restrict or limit TRUSTOR's right to execute other deeds of trust recorded before or after this Deed of Trust.

Signature of Trustor:

Stockwell Properties, LLC, a California  
Limited Liability Company

By:

  
Curtis D. Somoza, Managing Member

STATE OF CALIFORNIA  
COUNTY OF VENTURA

On Aug 11, 2005 before me TESSA HOTTINGER,  
a Notary Public in and for said County and State,  
personally appeared Curtis D. Somoza, proved to me on the basis  
of satisfactory evidence to be the person whose name is subscribed  
to the within instrument and acknowledged to me that  
he executed the same in his authorized capacity and  
that by his signature on the instrument the entity upon  
behalf of the person acted executed the instrument.

WITNESS my hand and official seal.

Signature: T.Hattinger

Notary Public



**“EXHIBIT 3”**

**RUS, MILIBAND & SMITH**

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

CITICORP PLAZA, 2600 MICHELSON DRIVE, SEVENTH FLOOR  
IRVINE, CALIFORNIA 92612  
TEL 949.752.7100 FAX 949.252.1514  
WWW.RUSMILIBAND.COM

RONALD RUS  
JOEL S. MILIBAND  
RANDALL A. SMITH  
LAUREL R. ZAESKE  
LEO J. PRESIADO  
D. EDWARD HAYS  
CATHERINE M. CASTALDI  
M. PETER CRINELLA  
JAME P. MASCARO

OF COUNSEL  
PATRICK K. McCLELLAN

WRITER'S E-MAIL  
LZAESKE@RUSMILIBAND.COM

April 9, 2008

REFERENCE NUMBER  
2161-0018

Marlene M. Colucci  
4267 Marina City Drive  
Unit 604/606  
Marina Del Rey, California 90292

Re: *In re Stockwell Properties, LLC*  
USBC Case No. 2:05-28700 AA (the "Stockwell Bankruptcy Case")

Dear Ms. Colucci:

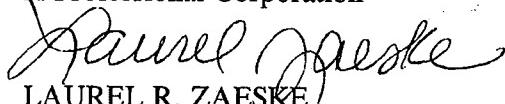
This firm is assisting Helen Frazer, the Chapter 7 Trustee (the "Trustee") in the above referenced bankruptcy case, in reviewing the claims filed in the Stockwell Bankruptcy Case. The Bankruptcy Court files reflect that you have filed a proof of claim for \$600,000, which has been assigned Claim No. 25. A copy of your claim is enclosed for your reference.

The Stockwell banking records do not reflect that Stockwell received \$600,000 from you in April 30, 2005, as reflected in your proof of claim. Can you please provide additional support that the funds were actually advanced to, or for the benefit of, Stockwell.

Should you have any questions regarding the above, please feel free to give me a call.

Very truly yours,

RUS, MILIBAND & SMITH  
A Professional Corporation

  
LAUREL R. ZAESKE

Enclosures

cc: Helen Frazer, Trustee (w/o encl.)

**“EXHIBIT 4”**

**AKIN GUMP  
STRAUSS HAUER & FELD LLP**

---

Attorneys at Law

STANLEY J. SAMORAJCZYK  
202.887.4002/fax: 202.887.4288  
ssamorajczyk@akingump.com

April 23, 2008

VIA FACSIMILE

Laurel R. Zaeske  
Rus, Miliband & Smith  
Citicorp Plaza  
2600 Michelson Drive, 7th Floor  
Irvine, CA 92612

Re: *In re Stockwell Properties, LLC*  
USBC Case No. 2:05-28700 AA (the "Stockwell Bankruptcy Case")

Dear Ms. Zaeske:

Our client, Marlene M. Colucci, has forwarded a copy of your April 9 letter regarding her claim in the Stockwell bankruptcy case, *In re Stockwell Properties, LLC*, and we are reviewing her file with her. As you are no doubt aware, the Coberly-Somoza Ponzi scheme was quite complex. We will be responding to your letter on behalf of our client in the very near future.

Sincerely,



Stanley J. Samorajczyk

cc: Mrs. Marlene M. Colucci  
Marlene Colucci, Esq.  
Peter Gurfein, Esq.

**“EXHIBIT 5”**

**Laurel R. Zaeske**

---

**From:** Helen R. Frazer [HFrazer@aalrr.com]  
**Sent:** Monday, November 16, 2009 12:24 PM  
**To:** Laurel R. Zaeske  
**Subject:** Fwd: Stockwell Bankruptcy - from Marlene Colucci (via Michele Colucci, formerly Zieger)

Sent from my iPhone

Begin forwarded message:

**From:** Michele Colucci <[michele@mylawsuit.com](mailto:michele@mylawsuit.com)>  
**Date:** November 16, 2009 2:11:39 PM CST  
**To:** "Helen R. Frazer" <[HFrazer@aalrr.com](mailto:HFrazer@aalrr.com)>  
**Cc:** 'Hugh Robertson' <[hdr@robertsonlum.com](mailto:hdr@robertsonlum.com)>  
**Subject: Stockwell Bankruptcy - from Marlene Colucci (via Michele Colucci, formerly Zieger)**

Dear Helen,

I recently received, by mistake, a contract signed by my "soon to be ex-husband" – we've been separated and going through a divorce since December of 2007, with Bruinbilt.

It seems that he gave a claim in the Stockwell bankruptcy to Bruinbilt.

I am wondering if that's my mother's claim...she is a widow (my father died four years ago) and we have had trouble locating the funds my ex husband has supposedly invested on behalf of my mother. If it is in fact our claim, it would be marital property of course and the claim does not belong to him alone nor does he have my power of attorney to make any deal on my behalf. When Ari filed for divorce and a restraining order in June of 2008 to try to prevent us from moving out of the LA area (unsuccessful), it took me eight months to get him in to court and pin him down to some small amount of child support. Needless to say, he has been less than forthcoming in all of the things he's been up to.

I moved up to Northern California with our three boys in June of 2008 and my mother has had to give her beautiful condo back to the bank thanks to Ari's actions in losing her life savings.

My parents had a note secured against Kurt Somoza's house in Beverly Hills – for 600,000. – that we can't find.

To my knowledge, that was the only claim in Stockwell any of us had.

Can you give me some information surrounding this deal - as he does not have the power of attorney to give anything away on her behalf!

Thanks for your assistance in this continuing financial and emotional debacle.

With Kind Regards,

Michele

--  
**Michele A. Colucci, Esq.**  
[MyLawsuit.com](http://MyLawsuit.com)  
2995 Woodside Road - Suite 400

Case 2:05-bk-28700-RK Doc 392 Filed 09/27/10 Entered 09/27/10 16:55:45 Desc  
Woodside, CA 94062 Main Document Page 33 of 90  
Tel: (323) 389-1809 Ext. 1  
Fax: (650) 530-2224  
<http://www.mylawsuit.com>

**“EXHIBIT 6”**

**Laurel R. Zaeske**

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**From:** Laurel R. Zaeske  
**Sent:** Wednesday, November 18, 2009 3:11 PM  
**To:** 'michell@mylawsuit.com'  
**Cc:** Joel S. Miliband  
**Subject:** FW: Stockwell Bankruptcy - from Marlene Colucci (via Michele Colucci, formerly Zieger)

Michele,

I represent Helen Frazer in the Stockwell Bankruptcy Case. Ms. Frazer forwarded to me your email for response. Please give me a call at your convenience to discuss the issues raised in your email below. In advance of your call, you might want to review the creditor claims docket in the Stockwell Bankruptcy Case and in particular, review the claims filed by Marlene Colucci for \$600,000 and the 2 claims filed by Ari Zieger.

Thank you, Laurel

Laurel R. Zaeske, Esq.  
Rus, Miliband & Smith, APC  
2211 Michelson Dr., Suite 700  
Irvine, California 92612  
(949) 752-7100  
[lzaeske@rusmiliband.com](mailto:lzaeske@rusmiliband.com)

Confidentiality Note: This e-mail and any attached documents contain information which is confidential and/or legally privileged. The information is intended only for the use of the individual or entity named on this e-mail. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this e-mail information, is strictly prohibited and that the documents should be returned to Rus, Miliband & Smith immediately. In this regard, if you have received this e-mail in error, please notify us by return e-mail or telephone (949-752-7100) immediately. Please delete the e-mail and all attachments and destroy all hard copies of same.

**From:** Michele Colucci <[michele@mylawsuit.com](mailto:michele@mylawsuit.com)>  
**Date:** November 16, 2009 2:11:39 PM CST  
**To:** "Helen R. Frazer" <[HFrazer@aalrr.com](mailto:HFrazer@aalrr.com)>  
**Cc:** 'Hugh Robertson' <[hdr@robertsonlum.com](mailto:hdr@robertsonlum.com)>  
**Subject: Stockwell Bankruptcy - from Marlene Colucci (via Michele Colucci, formerly Zieger)**

Dear Helen,

I recently received, by mistake, a contract signed by my "soon to be ex-husband" – we've been separated and going through a divorce since December of 2007, with Bruinbilt.

It seems that he gave a claim in the Stockwell bankruptcy to Bruinbilt.

I am wondering if that's my mother's claim...she is a widow (my father died four years ago) and we have had trouble locating the funds my ex husband has supposedly invested on behalf of my mother. If it is in fact our claim, it would be marital property of course and the claim does not belong to him alone nor does he have my power of attorney to make any deal on my behalf. When Ari filed for divorce and a restraining order in June of 2008 to try to prevent us from moving out of the LA area (unsuccessful), it took me eight months to get him in to court and pin him down to some small amount of child support. Needless to say, he has been less than forthcoming in all of the things he's been up to.

I moved up to Northern California with our three boys in June of 2008 and my mother has had to give her beautiful condo back to the bank thanks to Ari's actions in losing her life savings.

My parents had a note secured against Kurt Somoza's house in Beverly Hills – for 600,000. – that we can't find.

Can you give me some information surrounding this deal - as he does not have the power of attorney to give anything away on her behalf!

Thanks for your assistance in this continuing financial and emotional debacle.

With Kind Regards,

Michele

--  
**Michele A. Colucci, Esq.**

MyLawsuit.com

2995 Woodside Road - Suite 400

Woodside, CA 94062

Tel: (323) 389-1809 Ext. 1

Fax: (650) 530-2224

<http://www.mylawsuit.com>

**“EXHIBIT 7”**

**Laurel R. Zaeske**

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**From:** Rothschild, Brian [brothschild@akingump.com]  
**Sent:** Wednesday, June 09, 2010 6:19 PM  
**To:** Sara A. Maunder; Laurel R. Zaeske  
**Cc:** 'Peter J. Gurfein'; 'mcolucci@ahla.com'  
**Subject:** Stockwell Properties  
**Attachments:** Colucci-Letter re Stockwell Claim.pdf; Colucci - Promissory Note and Recorded Deed.pdf

Dear Laurel:

Attached please find a letter and exhibits providing additional support for Ms. Colucci's claim against Stockwell Properties.

Best regards,

Brian

Brian Rothschild | Financial Restructuring

Akin Gump Strauss Hauer and Feld LLP | 2029 Century Park East St. 2400 Los Angeles, CA 90067 |

direct: 310.728.3734 | direct fax: 310.229.1001 | [brothschild@akingump.com](mailto:brothschild@akingump.com) |

<http://www.akingump.com> | Google Voice all-purpose locator: 310.876.2299

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**IRS Circular 230 Notice Requirement:** This communication is not given in the form of a covered opinion, within the meaning of Circular 230 issued by the United States Secretary of the Treasury. Thus, we are required to inform you that you cannot rely upon any tax advice contained in this communication for the purpose of avoiding United States federal tax penalties. In addition, any tax advice contained in this communication may not be used to promote, market or recommend a transaction to another party.

The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.

AKIN GUMP  
STRAUSS HAUER & FELD LLP

Attorneys at Law

Settlement Communications - Subject to FRE rule 408

Brian M. Rothschild  
310.728.3734/fax: 310.229.1001  
[brothschild@akingump.com](mailto:brothschild@akingump.com)

June 9, 2008

VIA EMAIL

Laurel R. Zaeske  
Rus, Miliband & Smith  
Citicorp Plaza  
2600 Michelson Drive, 7th Floor  
Irvine, CA 92612

Re: *In re Stockwell Properties, LLC*; Claim No. 25 of Marlene M. Colucci

Dear Laurel:

This is in response to your recent letter to our client, Mrs. Marlene M. Colucci, and conversations among you, Peter Gurfein, and Sara A. Mauder, and me, in which your firm requested additional support showing that Ms. Colucci's funds were advanced to or for the benefit of Stockwell in exchange for the Secured Promissory Note (Straight Note) and recorded Deed of Trust, copies of which are attached for your convenience.

In response to your inquiry we are also enclosing copies of the following additional evidence:

1. Portions of the Rule 2004 Examination of Curtis D. Samoza of October 12, 2005, in the Stockwell Case:

- On page 124 Samoza, acknowledges the Deed of Trust on the Branston Court residence in favor of Victor Colucci, our client's late husband, in the amount of \$600,000.
- On pages 138 through 142 Samoza acknowledges the Colucci debt of \$600,000, that Stockwell received the funds from the Coluccis in the amount of approximately \$550,000 to \$600,000, and that the funds were used for construction costs on Wallingford, another residential property owned by Stockwell.

2. Pages 7 and 8 of Exhibit 2 to the Plea Agreement For Defendant Robert A. Coberly, Jr., in U.S. v. Robert A. Coberly, Jr., CR No. 06-479-AHM, U.S. District Court for the Central District of California.

**AKIN GUMP  
STRAUSS HAUER & FELD LLP**  
Attorneys at Law

Laurel R. Zaeske

June 9, 2008

Page 2

The Plea Agreement describes, in detail, how Samoza and Coberly used the vast majority of investors' funds to make Ponzi payments to investors and buy luxury houses, etc. Paragraph 17 of the Plea Agreement states that Samoza used \$17 million to purchase the residence on Branston Court in Westlake Village and that he transferred \$4,621,000 of investors' monies to Stockwell.

The foregoing establishes that Stockwell received approximately \$600,000 from the Coluccis as asserted in Claim No. 25.

This information is provided in response to your inquiry but is not intended to preclude the use or admission of additional evidence to support Claim No. 25 in any subsequent controversy.

Sincerely,



Brian M. Rothschild

cc: Marlene M. Colucci  
Sara A. Maunder, Esq.  
Peter J. Gurfein, Esq.

1 Somoza101205.txt  
2 UNITED STATES BANKRUPTCY COURT  
3 CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION  
4  
5 In Re:  
6  
7 STOCKWELL PROPERTIES, LLC,  
8  
9 Debtor.  
10  
11

) Case No. LA 05-28700-AA

) Volume I  
(Pages 1 to 157)

12  
13  
14  
15 RULE 2004 EXAMINATION  
16 CURTIS D. SOMOZA  
17 wednesday, October 12, 2005  
18 Encino, California  
19

20  
21  
22  
23  
24 Reported by:  
25 CHERYL A. MARTIN  
CSR NO. 4974

1

0 1 UNITED STATES BANKRUPTCY COURT  
2 CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION  
3  
4

Page 1

5 Somoza101205.txt  
6 In Re:  
7  
8 STOCKWELL PROPERTIES, LLC,  
9  
10 Debtor.  
11  
12

} Case No. LA 05-28700-AA

13  
14  
15  
16 RULE 2004 EXAMINATION AND DEPOSITION OF PERSON MOST  
17 KNOWLEDGEABLE OF STOCKWELL PROPERTIES, LLC, CURTIS  
18 SOMOZA, taken on behalf of Secured Creditor, The Charles  
19 Burtzloff Living Trust, at 16633 Ventura Boulevard, Suite  
20 800, Encino, California, commencing at 10:52 a.m. on  
21 Wednesday, October 12, 2005, before Cheryl A.  
22 Martin, California Certified Shorthand Reporter No. 4974.  
23  
24  
25

2

0 1 APPEARANCES OF COUNSEL:  
2 FOR SECURED CREDITOR, THE CHARLES BURTZLOFF LIVING TRUST:  
3 PLOTKIN, RAPORT & NAHMIAS  
BY: ALAN I. NAHMIAS, ESQ.  
4 16633 Ventura Boulevard, Suite 800  
Encino, California 91436-1836  
5 Telephone: (818) 906-1600  
Facsimile: (818) 907-9261  
6  
7 FOR ALLEGED DEBTOR:  
8 ROBINSON, DIAMANT & WOLKOWITZ  
BY: ROBYN B. SOKOL, ATTORNEY AT LAW  
Page 2

9 Somoza101205.txt  
10 1888 Century Park East, Suite 1500  
11 Los Angeles, California 90067  
Telephone: (310) 277-7400  
Facsimile: (310) 277-7584

12 FOR PETITIONING CREDITOR ZIEGER:

13 LINER, YANKELEVITZ, SUNSHINE & REGENSTEIF, LLP  
14 BY: SAM A. KOZHAYA, ESQ.  
15 1100 Glendon Avenue, 14th Floor  
Los Angeles, California 90024  
Telephone: (310) 500-3500  
16 Facsimile: (310) 500-3501

17 FOR CHEVY CHASE BANK:

18 PIKE, DUNCAN & MELMET, LLP  
19 BY: ROBERT M. RUBEN, ESQ.  
20 1820 E. First Street, Suite 420  
Santa Ana, California 92705  
Telephone: (714) 285-2639  
21 Facsimile: (714) 285-2668

22  
23 ALSO PRESENT: Charles Burtzloff  
Esrom Jayasinghe, Verbatim Video  
24

25

3

0 1 I N D E X

2 WITNESS EXAMINATION PAGE  
3 Curtis Somoza

4 By Mr. Nahmias 7

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7 DEPOSITION EXHIBITS

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10 Creditor Charles Burtzloff to take  
11 Videotaped Examination of Person Most  
Knowledgeable 14  
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1 ENCINO, CALIFORNIA; WEDNESDAY, OCTOBER 12, 2005  
2 10:52 A.M.

3  
4

5 THE VIDEOGRAPHER: We are on the record.  
6 This is the Rule 2004 Examination of Curtis  
7 Somoza taken on behalf of the creditor, In Re Stockwell  
8 Properties, LLC, pending before the United States  
9 Bankruptcy Court, Central District of California,  
10 Case No. LA0528700AA.

11 It is Wednesday, October 12, 2005. We are at  
12 16633 Ventura Boulevard, Suite 800 in Encino, California.

13 My name is Esrom Jayasinghe of Verbatim Video  
14 located at 9725 Gladbeck Avenue in Northridge,  
15 California.

16 This is the start of Tape 1. The time now is  
17 10:52.

18 And, Counsel, if you'd kindly introduce  
19 yourselves and state your affiliations, please.

20 MR. NAHMIAS: Alan Nahmias, N-a-h-m-i-a-s, of

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12 Q So Stockwell may or may not have claims against  
13 Mr. Parada and/or Mr. Zieger in conjunction with whatever  
14 damage you assert was caused?

15 A Correct.

16 MR. NAHMIAS: He and I both understand.

17 MS. SOKOL: I understand. I'm just --

18 BY MR. NAHMIAS:

19 Q Have you -- what was the most recent  
20 conversation you conducted with Mr. Coberly on this  
21 matter?

22 A On this matter. I probably have not discussed  
23 anything regarding this in a week.

24 Q It's been at least a week?

25 A Probably within a week. Sometime last week. It

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1 could have been Friday, but sometime during the week last  
2 week.

3 Q Who is Mr. Coberly's lender that he's proposing  
4 to bring in?

5 A I have the names. I don't pay a lot of  
6 attention to it, but he's mentioned them. It's the same  
7 name over and over that he has.

8 Q And you think he's that fearful of Stockwell's  
9 claims that he's prepared to go out and personally sign  
10 as a guarantor on a loan of several million dollars?

11 A I don't believe he's fearful so much of the  
12 Stockwell claims, but there's too much that me being an  
13 adversary of him would cause him far more damage than any  
14 amount I could recover in a court for this action.

15 Q When you say "you" being an adversary, are you  
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16 talking about you personally?

17 A Yes.

18 Q Has he discussed with you Persistence -- the  
19 filing by Persistence of its Chapter 11?

20 A As a consultant of Persistence, I do get updates  
21 on what's going on. He did tell me about it. That's  
22 really about all I know of it.

23 Q Were you consulted about it prior to the  
24 filing?

25 A I was informed of it, not consulted of it, but I

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1 was informed of it. The consulting I do for them is  
2 regarding the business of the insurance in determining  
3 who you insure at what price. That's what I consult with  
4 Persistence for.

5 He informs me almost as a courtesy as to what's  
6 going on with Persistence.

7 Q Are you a paid consultant?

8 A No.

9 Q Have you had any conversations with Mr. Zieger  
10 about resolving his claims since the filing of the  
11 Involuntary?

12 A No. Not -- I mean, I have had conversations  
13 with Mr. Zieger. We really haven't touched upon this too  
14 much. Even in the amount claimed, it's not a -- no. I  
15 haven't had any discussions with him.

16 Q Are you aware as to whether or not your counsel  
17 has had any conversations with either any of these  
18 parties or counsel for any of these parties regarding the  
19 settlement of their claims?

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20 A I'm not aware.  
21 Q What obligations are secured -- what obligations  
22 of Stockwell are secured by the Brunston property?  
23 A What do you mean by "obligations"?  
24 Q What indebtedness?  
25 A As far as the secured liens on the property?

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1 Q Yes.  
2 A Chuck Burtzloff has a 13.6 first trust deed on  
3 the property. There is a second -- Swedo & Jones. Mike  
4 Swedo, I think, and Scott Jones -- for 700,000. Collucci  
5 for 600,000.  
6 Q Who was the last one?  
7 A Collucci for 600,000.  
8 Q Who is Collucci? Does Collucci have a first  
9 name?  
10 A Victor, I believe. I can get that for you. I  
11 mean, it's a recorded note. It's on the pay offs.  
12 There's the property taxes that are --  
13 MS. SOKOL: Hold on. Do you want me to hand you --  
14 THE WITNESS: Is it on the prelim?  
15 MS. SOKOL: I think they were stapled together. I  
16 have a preliminary title report I can hand him. That  
17 way --  
18 THE WITNESS: Do you want me to go --  
19 MR. NAHMIAS: Sure.  
20 MS. SOKOL: Rather than have him --  
21 MR. NAHMIAS: Sure. I have -- I can give it to you.  
22 I have certain things. Certain things I don't have that  
23 you're referencing.

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24 (Discussion off the record.)  
25 (Whereupon Exhibit 8 was marked for

125

1 identification and is attached hereto.)

2 MR. NAHMIAS: Why don't we mark the ones that you  
3 don't get and we'll copy them when we're done.

4 MS. SOKOL: Here.

5 MR. NAHMIAS: I think we're going to be short one for  
6 perhaps the balance of what I've got here. I'm not sure.

7 Q Take a look, if you would --

8 MS. SOKOL: Just the deed of trust.

9 MR. NAHMIAS: Yeah. It's just the deed of trust.

10 MS. SOKOL: Oh, okay. I thought you wanted him to go  
11 through all the liens first.

12 MR. NAHMIAS: If -- well, let's take them one at a  
13 time and he can refer to that document.

14 MS. SOKOL: Okay. That's fine.

15 BY MR. NAHMIAS:

16 Q The second to the last page of Exhibit 8, do you  
17 see a signature in about the middle of the page there?

18 A Yes.

19 Q Is that your signature?

20 A I believe so.

21 Q Appears to be?

22 A It appears to be.

23 Q Do you recall signing a deed of trust in favor  
24 of the Burtzloff Living Trust?

25 A Yes, I do.

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1 MR. NAHMIAS: Let's look next at what we'll call  
2 Exhibit 9.

3 This is a Deed of Trust instrument No.  
4 20040702-0185565, two pages.

5 (Whereupon Exhibit 9 was marked for  
6 identification and is attached hereto.)

7 BY MR. NAHMIAS:

8 Q The bottom of Page 1, is that your signature?

9 A I believe so.

10 Q And the parties in the upper left-hand corner,  
11 same parties referenced in the first paragraph, Mike  
12 Swedo and Scott Jones?

13 A Yes.

14 Q Who are those two individuals?

15 A They're lenders.

16 Q Hard money lenders?

17 A Yes.

18 Q How much do you assert that Stockwell owes Swedo  
19 and Jones?

20 A I believe it's 700,000 now. The current -- the  
21 last payoff I saw was 700,000.

22 Q Was it ever 1.5 million?

23 A Yes.

24 Q It's been paid down?

25 A It was a cross collateralized guarantee. There

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1 was no note to this. The deed of trust was a business  
2 guarantee.

3 Q So Stockwell guaranteed --

4 A Yes. Somoza101205.txt  
5 Q -- somebody else's obligation?  
6 A Yes.  
7 Q Whose obligation did Stockwell guarantee?  
8 A My obligation.  
9 Q Your personal obligation. Not your trust, but  
10 you personally?  
11 A Correct.  
12 Q In conjunction with what?  
13 A I'm not sure what deal it was, but there was  
14 some deal that we had a \$1.5 million guarantee, which now  
15 it's down to 700,000.  
16 Q So then you would personally still owe Swedo and  
17 Jones this \$700,000?  
18 A Yes.  
19 Q Is that obligation or indebtedness current?  
20 A There were no payments due on it. It is due  
21 upon paying it.  
22 Q Term-free loan?  
23 A Essentially. It wasn't a loan. It was a  
24 guarantee.  
25 Q You guaranteed --

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1 A If I -- in order to get rid of the guarantee, I  
2 have to pay this -- I have to give them cash or I can  
3 give them another property, put the guarantee on.  
4 Q So --  
5 A It not a loan.  
6 Q I understand.  
7 Stockwell guaranteed your guarantee?

8 A Stockwell allowed me to pledge, or to put a  
9 Somoza101205.txt  
trust deed, or deed of trust, on Brunston for, not a  
10 debt, but for a guarantee.

11 Q It collateralized your guarantee?

12 A Yes.

13 Q What was your guarantee for? There was an  
14 underlying obligation that apparently you guaranteed?

15 A I guaranteed a business obligation.

16 Q Of?

17 A Of Persistence.

18 Q Okay. So Persistence is the party that is  
19 indebted to Swedo and Jones?

20 A I don't believe so anymore. When we had this  
21 separation -- that's why it's only 700,000. I took on  
22 the obligation so it's now --

23 Q So it's no longer a guarantee of an obligation  
24 but an actual obligation?

25 A It's an obligation of me to pay 700,000 to Mike

129

1 Swedo and Scott Jones. Again, you're using terminology  
2 here --

3 Q I'm not trying to confuse you. I'm trying --

4 MS. SOKOL: So it's an obligation of Curt Somoza  
5 personally to pay Swedo --

6 THE WITNESS: Mike Swedo and Scott Jones.

7 MS. SOKOL: And it's secured by --

8 THE WITNESS: By the Brunston property.

9 BY MR. NAHMIAS:

10 Q Okay.

11 A No interest due. No due date.

12 Q Somoza101205.txt  
Understood.

13 A Basically, if they want -- if I want to put a  
14 new loan on, they have to get paid off. That's  
15 essentially the deal.

16 Q There's no requirement that they subordinate or  
17 anything like that?

18 A Only if it's for less than the amount that I  
19 already have. If I put a new 13.6 on, although this has  
20 caused a lot of tension now, I could probably get them to  
21 go back and put it behind another 13.6, although that's  
22 not what I'm doing.

23 Q Are Swedo and/or Jones friends of yours?

24 A No.

25 Q How did you come to meet Swedo and Jones?

130

0 1 A Through Bob Coberly.

2 Q And their original loan was made to Persistence,  
3 is that correct, or their investment? You tell me.

4 A Again, that action, I don't recall. I'm not  
5 trying to mislead. I don't recall.

6 Q Okay.

7 A I believe the loan was actually made to me  
8 personally. I believe the loan was made to me  
9 personally, but I do not recall how that was --

10 Q So Persistence may actually not play any part at  
11 all in this?

12 A I know they don't now, but I believe when we  
13 actually -- when this deal was set up, they actually  
14 loaned me personally the money.

15 Q Swedo and Jones?

16 A Yes. Somoza101205.txt  
17 Q Okay.  
18 Then did you, in turn, give or loan any of it to  
19 Persistence?  
20 A Possibly. I don't recall and I don't want to  
21 state that.  
22 Q How did it come that you ended up with 700,000  
23 of it?  
24 A That, I believe, was the amount left due that  
25 they have not been paid back. See, they never loaned

131  
0 1 1.5.  
1 Q They never loaned 1.5?  
2 A No. It was for -- they wanted a guarantee of  
3 1.5. I agreed to that, but they --  
4 Q How much did they loan?  
5 A I believe 800,000. We could spend an hour on  
6 this and, again -- if I had all the -- I could go back  
7 and get more specific on how this whole thing came up,  
8 but this was not a straightforward loan.  
9  
10 Q Was it a loan at all or was it an investment?  
11 A Again, I believe it was a loan to me -- no.  
12 Actually, I don't recall how -- I'm trying to think.  
13 Q There was no note?  
14 A There was no note so it wasn't a loan.  
15 Q They just handed you the money?  
16 A I believe it was cross collateralized. I'm  
17 trying to remember. This was a cross collateralization  
18 for, I think, an investment in Persistence.  
19 MS. SOKOL: Do you have any documentation in your

20 office other than this deed of trust regarding this  
21 transaction?

22 THE WITNESS: No.

23 MS. SOKOL: This is all you have?

24 THE WITNESS: That's all I have on it. These

25 are Bob's father's best friends and they did something.

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0 1 I'm not quite sure, and somehow -- there was a note  
2 recorded for a million and a half on both my property and  
3 Robert Coberly's property.

4 BY MR. NAHMIAS:

5 Q A deed of trust?

6 A A dead of trust. Sorry. A deed of trust on  
7 both my property and Bob Coberly's property. All I know  
8 is however it ended up right now, I've got to give these  
9 guys 700 grand to take their note off my property. I  
10 don't know what got it to that point, but that's what it  
11 takes for me to get rid of them.

12 Q And you don't dispute it?

13 A It's what I'm --

14 Q Stockwell doesn't dispute it?

15 A Stockwell doesn't dispute it because they agreed  
16 to do it. So I can't dispute it.

17 I have a dispute with Bob against this. This  
18 is, again, where we have a lot of disputes over this is,  
19 "Why am I stuck with this?"

20 Q Is there something in writing between you and  
21 Stockwell acknowledging that Stockwell agreed to this?

22 A I don't recall. I can look for something like  
23 that.

24 Q Somoza101205.txt  
25 A That would be helpful.  
A Okay.

133  
1 Q If you can furnish it by Monday if, in fact, you  
2 come up with it.  
3 A Yeah.  
4 Q Had Swedo and Jones called or attempted to  
5 commence foreclosure proceedings in connection with their  
6 note?  
7 A No.  
8 Q Have you been in contact with either of them  
9 since the filing of the Involuntary?  
10 A No. I have not talked to them since whenever  
11 this was filed a year and a half or so ago.  
12 Q How much does Stockwell assert it owes Burtzloff  
13 at this point?  
14 A I believe the current pay off is 14 million and  
15 change.  
16 Q Is that disputed at all by stockwell?  
17 A 13.6 plus interest clearly is not. There are  
18 some other fees, that I don't know if they're disputed or  
19 not, but I don't think are proper.  
20 Q But the principle plus accrued interest is not  
21 disputed in any way?  
22 A No.  
23 Q If any other portion of the last figure you had,  
24 the pay off figure, is disputed could you furnish me with  
25 what the disputed portions are?

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1 A I'd have to see what the latest pay off number  
2 is and then --

3 Q Certainly. If I get you that --  
4 A Yes.

5 Q Okay.

6 MS. SOKOL: Yes. We don't have it right now.  
7 BY MR. NAHMIAS:

8 Q I assumed there was one for the foreclosure so  
9 it was ready to go.

10 A Yeah. There was a pay off at that time.

11 Q We can update it for you.

12 A Yes, please.

13 Q You started to tell me there was a -- I guess it  
14 would be a third priority deed of trust secured by  
15 Brunston.

16 A Yes.

17 MS. SOKOL: I don't think I've seen any documentation  
18 on it. What do you --

19 THE WITNESS: On the preliminary title report it  
20 lists them.

21 MS. SOKOL: I provided that to you. Let me find it.  
22 I have an extra copy.

23 MR. NAHMIAS: I have --

24 MS. SOKOL: It was sent over in the packet.

25 MR. NAHMIAS: Not with this because this came --

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1 Let's go off the record.

2 THE VIDEOGRAPHER: Off record at 3:33.

3 (Discussion off the record.)

4 THE VIDEOGRAPHER: On record at 3:39.  
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5 MR. NAHMIAS: We're going to deviate for a moment  
6 from where we were. I'm going to hand back to Ms. Sokol  
7 original files that were presented to me which contain,  
8 basically, invoices relating to maintenance and/or other  
9 improvements done at the -- both the Wallingford and the  
10 Brunston Court property.

11 These were produced in partial compliance of the  
12 documents requested under the 2004 orders.

13 Correct, Ms. Sokol?

14 MS. SOKOL: That's correct.

15 MR. NAHMIAS: All right. So I'm going to give you  
16 back the originals here and then you'll do what you wish  
17 with them.

18 MS. SOKOL: Okay.

19 And I've been requested by Robert Ruben, Chevy  
20 Chase's counsel, as well as Sam Kazhaya, Ari Zieger's  
21 counsel, to review these documents. My client and I  
22 agree that it is appropriate for them to look at the  
23 documents.

24 MR. RUBEN: Thank you.

25 MR. NAHMIAS: Which will be done off record.

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0 1 MS. SOKOL: Yes.

2 MR. NAHMIAS: Which is now.

3 THE VIDEOGRAPHER: Off record at 3:41.

4 (Recess taken.)

5 THE VIDEOGRAPHER: On record at 3:47.

6 (Whereupon Exhibit 10 was marked for  
7 identification and is attached hereto.)

8 MR. NAHMIAS: I'm going to present you, Mr. Somoza,  
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9 with what we'll call Exhibit 10. This is called a  
10 Customer Supplemental Report from Chicago Title. It's  
11 dated 8/10/05.

12 Q Do you see that?

13 A Yes.

14 Q Could you take a moment to review it, please,  
15 sir.

16 If you look in the upper right-hand corner  
17 you'll see page numbers. Do you see that?

18 A (Witness nodding.)

19 Q Take a look, if you would, please, at Page 20.  
20 That sets forth as Item No. 29 a deed of trust to an  
21 entity known as Surfside Funding Corporation. Do you see  
22 that?

23 A Correct. Yes.

24 Q And the amount of that indebtedness secured by  
25 the property is \$250,000?

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0 1 A Correct.

2 Q Is that obligation current?

3 A No.

4 Q It's past due and owing?

5 A Yes.

6 Q How delinquent is it?

7 A I think it was due in August, July or August.

8 Q Of '05?

9 A Of '05.

10 Q Has Surfside commenced its foreclosure  
11 proceeding?

12 A I believe so.

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13 Q You mentioned a Victor Collucci, and for some  
14 reason I'm not finding that. Could you point me to that  
15 obligation on this, please.

16 A I'm not familiar enough with this to know where  
17 it would be.

18 MR. NAHMIAS: Did you see it on here, Robyn?

19 MS. SOKOL: I'm looking now.

20 MR. NAHMIAS: Because I thought you said you saw  
21 it.

22 THE WITNESS: Actually, I believe it was recorded  
23 after 8/1 so I don't think it would show in this  
24 report.

25 MR. NAHMIAS: Okay. Fair enough.

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0 1 MS. SOKOL: I thought I saw it somewhere.

2 MR. NAHMIAS: I don't see it.

3 Q So Surfside appears to be in third position?

4 MS. SOKOL: Oh, there's a copy of the deed of trust  
5 attached to this Page 5, and I bet Collucci shows up --

6 THE WITNESS: It shows recorded 8 -- is that 8/27?  
7 5/27? I can't read the recording date.

8 BY MR. NAHMIAS:

9 Q It looks like May.

10 A Oh, but it's dated August 17.

11 Q Then it's got to be --

12 A 8/27 then. I guess it was recorded 8/27.

13 MR. RUBEN: It was executed -- if you look at the  
14 notarial acknowledgement.

15 BY MR. NAHMIAS:

16 Q Which would probably indicate why it's a  
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17 supplemental.

18 A Got it.

19 Q Okay. Let's stick with Page 20 for just a  
20 moment.

21 What was the consideration for the Surfside deed  
22 of trust?

23 A They loaned, I believe, \$180,000 to Stockwell.

24 Q "They" being Surfside?

25 A Yes. They being Surfside.

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D 1 Q And so how did 180 turn into 250?

2 A Points, interest, fees, blood, everything I can  
3 get out of it.

4 Q Is a copy of the Surfside note available?

5 A It should be. It was actually recorded against  
6 the Wallingford property and then cross collateralized by  
7 being on both properties. So it's probably in the  
8 wallingford.

9 Q Stack?

10 A Stack. And they recorded it on both properties.  
11 They'll get paid off with the first one.

12 Q And Stockwell acquiesced to that?

13 A Yes. They are both stockwell properties.

14 Q All right. Turning to Page 5, which is the  
15 Victor -- and I can't -- Mary Ann something -- Colucci  
16 deed of trust.

17 It's for \$600,000?

18 A Yes. That's what the deed of trust is for.

19 Q And how did this -- what was the consideration  
20 for this deed of trust?

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21 A I don't recall. I don't want to give a wrong  
22 answer, but it's -- I don't recall the amount.

23 Q Did Stockwell receive funds from Colucci?

24 A Yes. I don't recall the exact amount. That's  
25 -- I'm not saying I didn't say that we got funds. Yes.

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1 D 2 Stockwell got funds from Colucci. I don't know exactly  
what the amount was.

3 Q Approximating \$600,000?

4 A 550, maybe.

5 Q All right. But somewhere in that vicinity?

6 A Yes. And not disputed.

7 Q When were those funds received?

8 A May have been November of '04.

9 Q Is there a note?

10 A I don't believe so. It was a friendly deal that  
11 they wanted to make sure they had security for it.

12 Q Is the note past -- or is the loan past due?

13 A No. It is due upon sale, sale or refinance.

14 Q What do you have to memorialize that?

15 A This deed.

16 Q This deed simply grants a lien on the property.  
17 From what do you take -- what do you take from this that  
18 it would cause you to say that it's due on sale?

19 A There must be another document then. This  
20 probably is something that was signed at the same time of  
21 this then. I guess you only record the deed.

22 Q Correct.

23 A Okay. Then there's probably a note that went  
24 with this that was due upon sale. I thought it was

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25 actually written in the deed.

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0 1 Q Well, there is something in the last paragraph  
2 that says "if the property is sold."

3 A Yeah.

4 Q "That it becomes immediately due and payable,"  
5 but that doesn't mean it's not due and payable sooner.

6 A Promissory note dated April 30. Yeah. And  
7 there was -- so it's just not attached to this.

8 Q Is that something that you can access and get a  
9 copy?

10 A Sure. I should be able to get a copy of that.  
11 Put that on the list.

12 MS. SOKOL: You know where it is?

13 THE WITNESS: I know where all the deeds -- all the  
14 notes are so it should be with them.

15 MS. SOKOL: Okay.

16 BY MR. NAHMIAS:

17 Q So this was originally an unsecured loan to  
18 Stockwell?

19 A Yes.

20 Q And are the Colluccis friends of yours?

21 A Yes.

22 Q Does the note provide for interest?

23 A It provided for -- and, again, that's why I  
24 don't know the exact amount. I believe it was just the  
25 difference between what they lent versus the 600,000.

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0 1 Q So if it was 550, for example, the 50,000 is  
2 meant to be --

3 A Compensation.

4 Q In lieu of interest?

5 A Yes.

6 Q Was it intended to be a short term loan?

7 A Yes.

8 Q And, again, I'm sorry. Is it past due and  
9 owing?

10 A It's not due yet. In other words, we thought  
11 we'd have the property sold prior to that. So it's due  
12 upon sale. It didn't sell.

13 Q But it wasn't due upon sale originally because  
14 it wasn't a secured loan originally.

15 A It was. It just -- it was verbally agreed upon,  
16 "Due upon sale. We'll pay it," because --

17 Q Whenever sale comes about?

18 A Exactly. Whenever sale comes about. That got  
19 memorialized into writing and recorded.

20 Q And what did Stockwell do with the funds that it  
21 received from the Colluccis?

22 A I believe it was used for the construction costs  
23 on Wallingford.

24 Q We haven't talked much about Wallingford today.  
25 I don't really want to get into it now, but this is not

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0 1 the first time you've talked about the construction costs  
2 over there.

3 was -- when Wallingford was acquired was there a  
4 residence on the premises that had already been

5 constructed? Somoza101205.txt

6           A    Yes. And completed. It was left with an  
7           unfinished basement about 9,000 square feet. The  
8           construction that I'm calling is not new construction but  
9           completing the basement.

10 Q So finishing?

11 A We added a wine cellar, a theater, a gym and a  
12 spa in the basement.

13 Q There's one other document here, Item 27, which  
14 appears on Page 18. Do you see some notes -- this  
15 pertains to a \$1.9 million deed of trust in favor of  
16 Stockwell -- excuse me -- in favor of the Charles  
17 Burtzloff Living Trust. There's some notes written  
18 there.

19 It looks -- I'm trying to decipher. Is that  
20 your handwriting?

21 A No. That would have been the escrow officer.

Q Is that paid through Progressive?

23 A Paid through Progressive's escrow officer, Cathy  
24 Wilson.

25 Q Does that comport with your understanding?

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1 A oh, yeah. It was paid off

2 Q And it's been reconveyed?

3 A Yes. But it keeps showing up so obviously  
4 something wasn't done properly.

5 Q But it was reconveyed?

6 A It was reconveyed. The new owner

7 I believe it was only a two-month note and it was paid in full.  
8

9 Q Somoza101205.txt  
10 A Paid back sometime in 2003?  
11 MR. NAHMIAS: Off the record.  
12 THE VIDEOGRAPHER: Off record at 3:58.  
13 (Discussion off the record.)  
14 THE VIDEOGRAPHER: On record at 4:21.  
15 MR. NAHMIAS: All right.  
16 I'm going to mark as Exhibit 11 the appraisal of  
17 3970 Brunston Court property. Date of the evaluation,  
18 February 2, '05.  
19 (Whereupon Exhibit 11 was marked for  
20 identification and is attached hereto.)  
21 BY MR. NAHMIAS:  
22 Q Have you seen this document before?  
23 A Yes, I have.  
24 Q It says that it was commissioned for Clarion  
25 Mortgage Capital. Do you see that?

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0 1 A Yes.  
2 Q Who's Clarion?  
3 A No idea. Some -- one of the many brokers that  
4 was working on this.  
5 Q How did you come to receive a copy of this?  
6 A I got it through, I think it was Telstar  
7 Mortgage, who actually did -- I think they were working  
8 with Clarion Mortgage, but one of them forwarded me a  
9 copy.  
10 Q Within the last 12 months have you seen any  
11 other appraisals for the 3970 Brunston Court property?  
12 A Yes.

13 Q Somoza101205.txt  
14 A Do you have copies of those?  
15 A I do not. I can get a copy again. These are  
16 not my -- they are not my property. I know there are  
17 other ones that were done and I can get them from the  
18 brokers that have done them. I know of two others. One  
19 wouldn't even let me see it. One I'm sure I could get.  
One is fine.  
20 Q Do you know what the amounts are for each of  
21 those other ones?  
22 A 29 and a half was the one I know of.  
23 Q 29 and a half million dollars?  
24 A Is the one I know of.  
25 And the other one, I believe, was also 30.

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0 1 I also have the one that CHUB did. CHUB was the  
2 insurance company and that was 34 million.  
3 Q When was that conducted?  
4 A It's done annually. The latest one was,  
5 I think, August of last year.  
6 Q August of?  
7 A Of '04 -- no. August '05. I'm sorry. This  
8 past August.  
9 Q So, let's say, then there are three appraisals  
10 out there?  
11 A That's not a real appraisal. That's just the  
12 insurance. They do an appraisal based on the cost for  
13 insurance reasons.  
14 Q Replacement cost?  
15 A Replacement costs and -- I mean, whatever their  
16 appraisal is.

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1 THOMAS P. O'BRIEN  
2 United States Attorney  
3 CHRISTINE C. EWELL  
4 Assistant United States Attorney  
5 Chief, Criminal Division  
6 JILL FEENEY  
7 Assistant United States Attorney  
8 California Bar Number: 218506  
9 RUTH C. PINKEL  
10 Assistant United States Attorney  
11 California Bar Number: 164470  
12 1100 United States Courthouse  
13 312 North Spring Street  
14 Los Angeles, California 90012  
15 Telephone: (213) 894-2429/6077  
16 Facsimile: (213) 894-6269  
17 E-mail: jill.feeney@usdoj.gov/ruth.pinkel@usdoj.gov  
18 Attorney for Plaintiff  
19 United States of America

12 UNITED STATES DISTRICT COURT  
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA, ) CR No. 06-479-AHM  
15 Plaintiff, )  
16 v. ) PLEA AGREEMENT FOR DEFENDANT  
17 ROBERT A. COBERLY, JR., ) ROBERT A. COBERLY, JR.  
18 Defendant. )  
19 \_\_\_\_\_)

20  
21 1. This constitutes the plea agreement between ROBERT A.  
22 COBERLY, JR. ("defendant") and the United States Attorney's  
23 Office for the Central District of California ("the USAO") in the  
24 above-captioned case. This agreement is limited to the USAO and  
25 cannot bind any other federal, state or local prosecuting,  
26 administrative or regulatory authorities, except the United  
27 States Department of Justice, Tax Division, Criminal Enforcement  
28 Section.

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PLEA

2       2. Defendant agrees to plead guilty to count one of the  
3 indictment United States v. Robert A. Coberly, Jr., CR No. 06-  
4 479-AHM, in accordance with the statement of facts attached  
5 hereto as Exhibit 2. Defendant also gives up the right to  
6 indictment by a grand jury and agrees to plead guilty to a one-  
7 count information in the form attached to this agreement at  
8 Exhibit 1 or a substantially similar form.  
9

NATURE OF THE OFFENSE

10      3. In order for defendant to be guilty of count one of the  
11 indictment which charges a violation of Title 18, United States  
12 Code, Section 371, the following must be true: (a) there was an  
13 agreement between two or more persons to commit mail fraud and  
14 wire fraud; (b) the defendant became a member of the conspiracy  
15 knowing of at least one of its objects and intending to help  
16 accomplish it; and (c) one of the members of the conspiracy  
17 performed at least one overt act for the purpose of carrying out  
18 the conspiracy. In order for defendant to be guilty of count one  
19 of the superseding information which charges a violation of Title  
20 26, United States Code, 7201, the following must be true: (a) the  
21 defendant owed federal income tax for the calendar year 2005; (b)  
22 defendant knew that federal income tax was owed; (c) the  
23 defendant made an affirmative attempt to evade or defeat the  
24 income tax; and (d) in attempting to evade or defeat such tax,  
25 the defendant acted willfully. Defendant admits that defendant  
26 is, in fact, guilty of these offenses as described in count one  
27  
28

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**EXHIBIT 2**

**Exhibit 2**

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STATEMENT OF FACTS FOR ROBERT A. COBERLY, JR.'S GUILTY PLEAS

Conspiracy Charge

1. In December 2001, Robert A. Coberly, Jr. ("Coberly") met Curtis D. Somoza ("Somoza").
2. Somoza told Coberly about an allegedly profitable prime bank note investment and convinced Coberly to solicit investors. Somoza also solicited investors.
3. From approximately September 2002 through May 2003, Somoza and Coberly solicited approximately \$6.7 million to purchase of prime bank notes on behalf of about 50 investors nationwide. Somoza and Coberly obtained investor money through RC Investment Corporation ("RC") and Pinnacle Investment Corporation ("Pinnacle").
4. Somoza and Coberly told the investors that their funds would be used to purchase high-grade bank notes with a guaranteed return of 120% per year. Contrary to the representations made to the investors, the majority of the investment funds, close to 80%, were not sent to purchase bonds. Instead, the majority of the funds were used to make "interest" payments to earlier investors in the scheme or by Somoza and Coberly for their own personal expenses. Somoza and Coberly falsely led investors to believe that these payments were profits from the bank note investments, when in reality there was no "return" on any investment and no profits. Somoza and Coberly also failed to inform investors that a large portion of their funds were being

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spent by Somoza and Coberly to fund their lifestyles and other business ventures.

5. After an investigation by the Securities and Exchange Commission, Coberly and Somoza entered into settlement agreements with the Pinnacle and RC investors. By a letter dated July 18, 2003, Coberly advised the investors that they would receive a wire transfer to their bank accounts in the amount of their outstanding principal balance plus a ten percent return.

6. In order to fund the payment of these investors, in approximately the summer of 2003, Somoza began soliciting funds from Horace Ardinger, an individual residing in Dallas, Texas.

7. In or about July 2003, Ardinger invested \$5 million with Somoza. Somoza falsely represented to Ardinger that this money was to be used for bond trading, although Coberly did not become aware of this misrepresentation until later. At the time, Somoza told Coberly that Ardinger had loaned the money to Somoza using Somoza's residence on Brunston Court as collateral.

Approximately \$2.3 million of the \$5 million solicited and received from Ardinger was used by Somoza and Coberly to pay back RC and Pinnacle investors, although Somoza and Coberly led these investors to believe that they were receiving a return of their funds and profits, not funds received from another investor. In addition, Somoza and Coberly "paid" the RC/Pinnacle investors over \$5 million, using only the \$2.3 million, by convincing

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investors to re-invest with them, and then using the re-invested money to pay off other RC/Pinnacle investors. The remaining \$2.7 of the \$5 million from Ardinger was used for personal expenditures by Somoza.

8. In October 2003, Somoza solicited and received another \$5 million from Ardinger. Somoza falsely represented to Ardinger that this money was to be invested in bond trading or certificates of deposit, although Coberly did not become aware of either the solicitation of funds or this misrepresentation until March 2004. Somoza later told Coberly that he used these funds to pay off a \$1.9 million loan on Somoza's house on Brunston Court, to buy a computer company, Envoii, and to pay other personal expenses of Somoza.

9. In or about December 2003, Somoza solicited and received from Ardinger another \$5 million to be invested in the insurance pool scheme described more fully below. Somoza falsely represented to Ardinger that the funds would be invested in insurance pools. Coberly did not become aware of the receipt of the funds until March 2004 when Somoza falsely told him that the \$5 million was in an account at Asset Max. In July 2004, Somoza admitted to Coberly that he had actually spent this money on his own personal expenses.

10. In approximately March 2004, Coberly became aware of the misrepresentations used by Somoza to obtain the first \$10

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million of Ardinger's funds described above in paragraphs 7 and 8. Somoza requested Coberly's help in making it appear that Ardinger had not been defrauded. Coberly drafted two declarations for Ardinger to sign which falsely made it seem as if Ardinger's earlier investments were not earmarked for specific investments, but instead that Ardinger gave the first \$10 million to Somoza, in July and October 2003, as a loan for Somoza to use any way he wished. Somoza then convinced Ardinger to sign the untrue declarations. Also, at this time, Somoza falsely informed Coberly that the \$5 million referenced in paragraph 9 remained in an escrow account maintained by Asset Max to purchase a life insurance pool.

11. Beginning in or about July 2003, Somoza and Coberly solicited individuals, including the previous investors in RC and Pinnacle, for various investments, including prime bank trading and real estate.

12. Starting in approximately December 2003, Somoza and Coberly started utilizing Persistence Capital, LLC to raise funds from investors for the purchase of pools of life insurance policies issued by Transamerica Occidental Life Insurance Company ("Transamerica"). The policies would be purchased on behalf of the Personal Involvement Center ("PIC"), an African-American church-based organization run by the senior pastor at the Praise of Zion Baptist Church in South Los Angeles (the "Reverend").

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The policies were to provide life insurance coverage for members of the Reverend's congregation and other largely African-American PIC members.

13. Somoza and Coberly told investors that the program would work as follows: Persistence and, later, its related entities (including Persistence Family I, LLC, Persistence Friends I, LLC and Persistence Friends II, LLC) would use the investors' funds to loan money to PIC to purchase pools of life insurance policies on behalf of qualifying PIC members. The policies would be issued by Transamerica and would generally provide a death benefit of approximately \$275,000 per insured. Each policy would provide for the payment of a small death benefit to the insured's beneficiaries (generally \$15,000) upon his or her death. (These benefits would help cover the burial and funeral expenses of the insureds.) PIC and Persistence would then split the remaining death benefit with \$20,000 going to PIC and the remaining \$240,000 (or approximately 87% of the total death benefit) going to Persistence or its related entities.

14. Somoza and Coberly represented to investors that their investment was risk-free and would offer a high rate of return.

15. Overall, Somoza and Coberly raised approximately \$64,634,389 for placement in the purported insurance pools and other alleged investments offered by Persistence and its related entities. Somoza and Coberly, however, used only \$2,246,000 of

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these investor funds to finance the purchase of life insurance pools on behalf on PIC. Specifically, in or about March 2004, Persistance paid approximately \$2,246,000 to pay the first year's premium on Transamerica Pool #1. Later, in or about November 2004, Persistance and its related entities paid approximately \$2,486,059 to pay the first year's premium on Transamerica Pool #2. However, this second premium payment was not made with investor funds.

16. Rather than use the investors' funds as promised, Somoza and Coberly misappropriated the vast majority of the investors' funds for unauthorized uses, including to make "Ponzi" payments to the victim-investors in the RC/Pinnacle scheme; to make "Ponzi" payments to Ardingar and other Persistence investors, many of which Somoza and Coberly falsely characterized as "returns" on the investors' insurance programs; to buy luxury houses, cars, boats, and jewelry for themselves; and to otherwise support their lavish lifestyles.

17. Somoza, for example, used approximately \$3.5 million of investor funds towards the purchase of a \$17 million house located at 3970 Brunston Court in Westlake Village, California; approximately over \$4.75 million of investor funds towards the purchase of a \$14 million house located at 2571 Wallingford Drive in Beverly Hills, California; approximately \$240,000 to purchase a 2003 Ferrari sportscar for himself; approximately \$220,000 to

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purchase a Ferrari sportscar for Coberly; approximately \$265,000 to purchase an Aston Martin Vanquish automobile; approximately \$292,000 to purchase a 44-foot MTI Supercat Racing Boat; and approximately \$447,000 for the purchase of a Ulysses Nardine limited edition "Ghenghis Khan" wristwatch. In addition, Somoza transferred approximately \$4,347,500 of investor monies to Convoii Inc., and \$4,621,000 to Stockwell Properties, LLC, both of which were companies Somoza owned and controlled.

18. Coberly also misappropriated investors' money. For example, Coberly used approximately \$871,000 of the Pinnacle investor monies in April 2003 towards the purchase of a \$4 million house located at 2222 Norfield Court in Westlake Village, California. Coberly also transferred approximately \$1,036,000 of the Persistence investors' funds to Sonic Properties, LLC, a company he owned, controlled, and used solely to pay his personal household expenses including the following: mortgage; property taxes; furniture; remodeling; landscaping; utilities; groceries; personal chefs; personal trainer; nannies; babysitters; clothing; birthday parties for his children and other personal family expenses. Coberly transferred at least approximately \$2.4 million of Ardingers's money to Pinnacle to pay back investors in the RC/Pinnacle scheme, as described in paragraph 7. He also used approximately \$118,000 of the Persistence investors' funds to purchase a 2003 Mercedes Benz SL55 convertible.

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19. Coberly and Somoza hired the law firm of Loeb & Loeb to represent Persistence Capital, LLC, in or about January 2004. Prior to hiring the firm, Coberly and Somoza had a conversation in which they decided to not tell the law firm they were then under investigation by the SEC for the RC/Pinnacle Investments scheme and were represented by another law firm, Manatt, Phelps & Phillips, in that action. Additionally, during the period of time in which Loeb & Loeb represented Persistence Capital, LLC and Coberly, personally, between January 2004 to mid-September 2004, neither Coberly nor Somoza told any of the Loeb & Loeb attorneys that they had obtained investor funds for alleged investments in the insurance pools by misrepresenting material facts to investors and omitting others. In addition, at no time prior to the filing of the civil action entitled SEC v. RC Investment Corp., et al., CV 04-7400-GHK(Ex) on or about September 8, 2004, did either Coberly or Somoza inform Loeb & Loeb that they were under investigation by the SEC.

20. Loeb & Loeb provided advice to Persistence Capital, LLC in how to convert their investors, to whom Coberly and Somoza personally owed money pursuant to personal guarantees, to owners of units in the various Persistence Capital LLCs. Starting in approximately June and July 2004, individual investors were solicited by Coberly and Somoza to convert the loans owed to them to ownership units, or equity shares, in the LLCs. In part,

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Coberly and Somoza wanted to convert the investors to LLC units because they then had no money with which to repay investors, who were owed tens of millions of dollars at that point, and conversion would enable them to put off making any payments to the investors.

21. In the summer of 2004, during the process of converting investors to units in the LLC, neither Coberly or Somoza informed investors that they, Coberly and Somoza, had no money to pay back investors at that time, or that they had already spent millions of investors funds on their own personal expenses and to pay back other investors. Similarly, at the time they solicited the vast majority of investor funds, neither Coberly nor Somoza informed investors that they had not received any returns or profit from any investment in life insurance policies, bond trading, real estate investments or anything else. Coberly and Somoza also caused letters to be sent to investors which misrepresented, among other things, both the risk of the investment, or conversion to the LLC, and the return on the investment. Coberly purposely did not show these letters to Loeb & Loeb because he felt its attorneys would not allow him to make such misrepresentations to investors.

22. Somoza and Coberly caused the investors to transfer their funds into accounts controlled by Somoza and Coberly, either by wire transfer or through the mails.

**SECURED PROMISSORY NOTE  
(STRAIGHT NOTE)**

\$600,000

Los Angeles, California

April 30, 2005

**Due Date and Principal Amount Loaned**

FOR VALUE RECEIVED, the undersigned, Stockwell Properties LLC, and their title of that entity), jointly and severally (collectively "Maker"), in lawful money of the United States of America, at wherever so designated by Payee/Holder of this Note the principal amount of six hundred thousand dollars with interest at the rate of 2% per annum as to the sum of \$6,000 from May 1, 2005 to October 31, 2005, at which time all unpaid principal balance and earned and accrued interest shall become due and payable.

Maker acknowledges its execution of this Secured Promissory Note and Short Form Deed of Trust and Assignment of Rents executed concurrently herewith by Maker as the named Trustor.

**Due on Sale Clause**

In the event Maker sells, transfers and/or conveys, voluntary, by operation of law, and/or involuntarily, in whole or in part, some or all of the collateral defined and described in said referenced security instruments and as referenced herein below, or any interest thereof without the prior written consent of the Payee/the Holder of this Note, which consent can be unreasonably and arbitrarily withheld, whether it be by outright sale, transfer, assignment and/or conveyance, Payee/Holder at its option may call, declare and accelerate the entire unpaid principal sum and any and all accrued interest immediately due and payable.

**Prepayment Privilege**

This Note and any unpaid principal balance and accrued interest may be prepaid, in whole or in part, at any time during the terms of this Note by Payee without penalty.

**Acceleration Upon Default**

Should default be made or upon the failure of Maker to pay any sum specified in this Note when due, or upon a breach or default of any other term, covenant, condition, provision, stipulation and/or agreement of the Note and security instruments as referenced herein, including that certain mortgage instrument executed by Maker as Borrower to the Public Trustee of the county in which the collateral is situated, as trustee, in favor of Payee as Lender, security this Note, or any other instrument given as collateral security for the obligation evidenced by this Note, the entire unpaid principal

indebtedness, or so much thereof as may remain unpaid at the time, plus any earned and accrued interest and any other monetary obligations then due and owing, shall, at the option of the Payee/Holder, become immediately all due and payable; and payment of said principal indebtedness, or the balance thereof, and all interest thereon, together with any and all other sums due under the terms of the Note and mortgage instrument, and/or any other instrument given as collateral security for the obligation evidenced by this Note may be enforced and recovered at once, it being understood and agreed that time and performance are expressly made of the essence.

**Interest on Default**

Should default be made in payment of any of the indebtedness evidenced hereby after the entire principal amount hereof shall have become due and payable, whether by acceleration, at maturity, or otherwise, the entire unpaid balance of that principal sum shall bear interest at the rate set forth in this note.

**Time of the Essence**

It is understood that time and all performances are expressly and specifically of the essence.

**Waiver Provisions**

The Maker; and any endorsers, guarantors, and/or sureties of this Note, and each of them, hereby waive diligence; demand; presentation for payment; notice of non-payment; dishonor; protest; and notice of any renewals or extensions of this Note, whether made to or in favor of the Maker, or any other person or persons. The pleading of any statute of limitations as a defense to any demand against the Maker, or any such endorsers, guarantors and/or sureties is expressly and specifically, knowingly and intelligently, voluntarily and explicitly waived by each and all of said parties, i.e. Maker, endorsers, guarantors and sureties.

Maker hereby expressly waives demand, presentation for payment, notice of dishonor, protest and notice of protest. This Note may not be changed or terminated, except by written agreement signed by the party against whom any enforcement of any change, modification, waiver or discharge is sought.

Wherever a waiver or release is given and/or provided by Maker in favor of Payee/Holder, it is understood that such waiver and/or release is given knowingly, voluntarily, intelligently, expressly and specifically and in the total absence of any fraud, mistake, coercion, undue influence, duress and/or confusion.

**Non-Waiver of Rights by Payee**

Neither (i) the failure of Payee/Holder hereof to exercise its rights to accelerate this Note when such option shall be come available, nor (ii) any delay or omission on the part of the Payee/Holder hereof in exercising any right hereunder or any of the agreements referred to herein shall operate or be construed, deemed or understood as a waiver of such option and right or of any such other right hereunder or under the mortgage instrument or under said agreement of any of then, or in event a default has not been cured prior to the time of exercise of any such right by the Payee/Holder hereof.

By accepting payment of any sum due hereunder after it is due and owing, the Payee/Holder hereof shall not be deemed, construed, interpreted and/or understood to have waived its rights to require prompt payment when due of any and all other sums hereunder or to declare an event of default as herein provided for failure to make prompt payment. No delay or omission on the part of the Payee/Holder hereof in exercising any right under this Note or mortgage instrument, or nay other agreement referred to herein shall operate or otherwise be construed, interpreted, understood or otherwise deemed as a waiver of any such right.

**Default Provisions**

Maker shall be deemed in default under the terms of this Note or mortgage instrument as referenced herein if any of the following events occur: (i) Maker fails to make any payment when due, (ii) Maker breaks any promise or breaches any covenant which Maker has made to Payee, or Maker fails to comply with or otherwise timely perform when due any other term, obligation, covenant, or condition contained in this Note, any mortgage instrument, or any other agreement related to this Note; (iii) Maker defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Maker's property or Maker's ability to repay this Note or perform Maker's obligations under this Note or any of the related documents as referenced herein, including any mortgage instrument; (iv) any representation or statement made or furnished to Payee by Maker or on Maker's behalf is false or misleading in any material respect, either now or at any time made or furnished; (v) Maker becomes insolvent, a Receiver is appointed for any part of Maker's property, Maker makes an assignment for the benefit of creditors, or any proceeding is commenced either by Maker or against Maker under any bankruptcy or insolvency laws; (vi) any creditor tries to take any of Maker's property on or in which Payee has a lien or security interest; (vii) a material adverse change occurs in Maker's financial condition; and (viii) any guarantor dies or any of the other events described in this default section occur with respect to any guarantor of this Note, provided, however, this "(viii)" provision shall not be applicable for purposes of declaring a default, breach, and/or nonperformance, should an on condition that within thirty (30) days of the death of any such guarantor the guarantor's personal representative, executor, or authorized representative of guarantor's estate delivers in writing to Payee/Holder notification unconditionally, absolutely, and irrevocably affirming, acknowledging, and agreeing that:

- (a) the Note, any mortgage instrument or other security instrument executed pursuant to the terms hereof for the benefit of Payee and its assigns and successors, as referenced, described , and/or set forth in this Note, are in full force and effect and constitute legal, valid, binding, and enforceable obligations of the guarantor and its assigns and successors in accordance with and pursuant to its respective terms per said Note, mortgage/security instrument (s) and to which enforcement may be sought pursuant to the applicable state laws;
- (b) there are no claims, counter claims, offsets, deductions, and/or defenses, or companion rights thereto, to the Maker's obligations as set forth in this Note and related mortgage/security documents;
- (c) any claim, right, and/or remedy on and/or to which a disaffirmance and/or rejection of this Note and any companion mortgage/security instruments and/or documents, and the underlying obligations relating thereto, are expressly, specifically, knowingly, and voluntarily waived, including a waiver of any unknown, unsuspected, and/or unforeseen aspects or claims concerning and/or as a consequence of such waiver pursuant to California Civil Code s1542;
- (d) any waivers given are understood to be unconditional, absolute, and irrevocable in all respects and shall be valid and legally binding the guarantor's estate and his representatives;

#### Payees Remedies

All rights and remedies under this Note and mortgage instrument are understood to and shall be cumulative in effect with all other rights and remedies Payee/Holder has or may have in law, at equity, by virtue of the mortgage or security instrument, or otherwise. Failure by Payee/Holder to exercise any right or remedy at any particular time shall not be deemed, construed, interpreted or understood as a waiver of any such right or remedy, or any other rights or remedies.

#### Attorneys Fees

In the event suit or action be instituted on this Note, or any attorney be employed or expenses be incurred to compel payment of this Note or any portion of the indebtedness evidenced hereby, or to defend the priority of the mortgage instrument, or as otherwise provided in the mortgage instrument, Maker promises and agrees to pay all such expenses and attorneys fees actually incurred by the Payee/Holder as a result thereof.

**Notices**

Except as otherwise provided to the contrary herein, any notice herein required or permitted to be given shall be done so in writing and may be personally served or sent by mail to the addresses, and if by mail, shall be deemed to have been given when deposited in the United States mail, registered or certified, return receipt requested, with postage prepaid and properly addressed. Any such notice transmitted through the U.S. Mail shall be deemed effective within three (3) business days of dispatch to the addressee. For the purposes hereof, the addresses of the Maker and Payee (until notice of a change thereof is given as provided in this specific subparagraph) shall be as follows:

If to Maker:

Stockwell Properties, LLC  
2934-1/2 Beverly Glen Circle  
#390  
Bel-Air, CA 90077

If to Payee:

Victor H. Colucci and Marlene M. Colucci  
4267 Marina City Drive  
#604/606  
Marina Del Rey, CA

**Miscellaneous Provisions**

Every provision in this Note is intended to be severable. In the event any provision of this Note shall be determined by a body of competent jurisdiction to be void, illegal, invalid, or unenforceable (collectively "Unenforceable"), the remaining terms and provisions of this Note shall not be affected thereby, and each of such remaining terms and provisions of this Note shall be valid and enforceable to the fullest extent permitted by law, unless a party demonstrates by a preponderance of the evidence that the Unenforceable provision was an essential economic or substantive and material term of this Note. This Note and its terms and any ambiguity which may exist or be discovered shall be equally and fairly interpreted by and between Maker and Payee and without reference to the party who prepared or caused to be prepared this Note. To the extend required, Maker hereby waives and releases any rights, privileges, benefits and/or claims under California Civil Code s1654 or any amended or successor statute thereto.

**Allocation of Payments**

Payments made per the terms of this Note shall be credited first to interest, then to principal, and then to any other costs, fees or expenses due and owing under this Note. Principal, interest, charges, costs and expenses are payable in lawful money of the United States of America.

**Governing Law and Venue**

This Note has been delivered to Payee and accepted by Payee in the County of Los Angeles, State of California. This Note shall be governed by, construed and interpreted in accordance with California law. If a lawsuit is filed, Maker agrees upon Payee's request to submit to the jurisdiction of the Courts of Los Angeles County, State of California. Maker and Payee expressly and specifically waive the right to any jury trial in any action, proceeding, cross-complaint, or counter claim brought by either Payee or Maker against the other.

**Binding Effect**

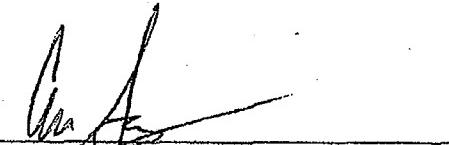
The terms of this Note shall be binding upon, inure to the benefit and applied to all parties and their respective heirs, legatees, devisees, administrators, personal representatives, executors, successors in interest and assigns.

**Collateral Security Performances and Repayment**

This Note is secured by:

- (i) The above referenced mortgage instrument to and in favor of (title company), as Trustee, and recorded against that certain unimproved real property located in the County of (Ventura, California) commonly known as and located at 3970 Brunston Court, Thousand Oaks, CA 91362

STOCKWELL PROPERTIES, LLC

  
Curtis Sombra, Manager

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Victor H. Colucci  
Marlene M. Colucci  
4267 Marina City Drive, Unit 604/606  
Marina Del Rey, CA 90292

20050822-0208255  
Pages: 2 Fees: \$14.00  
08/22/2005 12:27:28 PM  
T20050071939 FO  
Ventura County Recorder  
Philip J. Schmit

SPACE ABOVE THIS LINE IS  
FOR RECORDER'S USE

**DEED OF TRUST**

This Deed Of Trust dated August 17, 2005 relates to Stockwell Properties, LLC, a California Limited Liability Company (herein called TRUSTOR, whose address are Stockwell Properties 3970 Brunston Court, Westlake Village, California 91362); Chicago Title Company (herein called TRUSTEE); and Victor H. Colucci and Marlene M. Colucci (herein called BENEFICIARY).

For the purpose of securing the Promissory Note dated April 30, 2005 in the amount of \$600,000, TRUSTOR grants to TRUSTEE in trust, with power of sale, the Property commonly known as 3970 Brunston Court, Westlake Village, County of Ventura, State of California, described as:

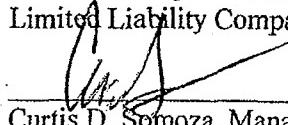
Lot 1 of Tract No. 4023, as per map recorded in Book 105, Page(s) 62-68 of Maps, in the Office of the County Recorder of Ventura County, State of California. Excepting therefrom all oil, gas and other hydrocarbon substances and other minerals lying below a depth of 500.00 feet with no rights of surface entry in said property.

In the event TRUSTOR sells the property described herein, all sums then owing under the Note secured hereby shall become immediately due and payable. Nothing in this instrument shall in any way restrict or limit TRUSTOR's right to execute other deeds of trust recorded before or after this Deed of Trust.

Signature of Trustor:

Stockwell Properties, LLC, a California  
Limited Liability Company

By:

  
Curtis D. Somoza, Managing Member

STATE OF CALIFORNIA  
COUNTY OF VENTURA  
On May 11, 2005 before me TESSA HOTTINGER,  
a Notary Public in and for said County and State,  
personally appeared Curtis D. Somoza, proved to me on the basis  
of satisfactory evidence to be the person whose name is subscribed  
to the within instrument and acknowledged to me that  
he executed the same in his authorized capacity and  
that by his signature on the instrument the entity upon  
behalf of the person acted executed the instrument.  
WITNESS my hand and official seal.

Signature: T. Hottinger  
Notary Public



**“EXHIBIT 8”**

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**Laurel R. Zaeske**

**From:** Laurel R. Zaeske  
**Sent:** Thursday, June 10, 2010 11:07 AM  
**To:** 'Rothschild, Brian'  
**Cc:** Sara A. Mauder  
**Subject:** RE: Stockwell Properties

Brian,

Thank you for your letter. When we spoke the other day I told you that the Trustee needed documentation that the Coluccis paid the funds giving rise to the note (@\$550,000). We require either copies of checks or wire transfer information. This would allow the Trustee to trace the funds. Your correspondence does not contain that information.

The Stockwell records do not show cash receipts for this amount (or anything similar) during this time frame. You should also be aware that Mrs. Colucci's daughter contacted the Trustee on her behalf and advised the Trustee that the funds related to this note were given to Mr. Zieger and not to Mr. Somoza and/or Stockwell further supporting the need for proof of payment to Stockwell.

Also could you please provide the Trustee with information / explanation as to the following. The Stockwell note is dated April 30, 2005. The deed of trust is dated 31/2 months later or August 17, 2005 (and was recorded August 22, 2005.). Please explain the difference in dates. Also, the DOT is dated the same date that the Stockwell involuntary case was filed. One of the petitioning creditors was Ari Zieger. We understand that Mr. Zieger is the son-in-law of the Coluccis. Putting aside whether Stockwell could give a valid DOT on the date of the involuntary, please advise what information about the involuntary filing the Colucci's were aware of at the time that the DOT was given.

As we discussed, the Trustee will take into consideration any evidence Mrs. Colucci can provide that the note proceeds were to or for the benefit of Stockwell in determining whether to object to the Colucci proof of claim.

Thank you, Laurel

LAUREL R. ZAESKE

RUS, MILIBAND & SMITH

A PROFESSIONAL CORPORATION

2211 MICHELSON DRIVE

SEVENTH FLOOR

IRVINE, CALIFORNIA 92612

(949) 752-7100 MAIN

(949) 262-1514 FAX

[laeske@rusmiliband.com](mailto:laeske@rusmiliband.com)

[www.rusmiliband.com](http://www.rusmiliband.com)

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**From:** Rothschild, Brian [mailto:[brothschild@akingump.com](mailto:brothschild@akingump.com)]

**Sent:** Wednesday, June 09, 2010 6:19 PM

**To:** Sara A. Mauder; Laurel R. Zaeske

Dear Laurel:

Attached please find a letter and exhibits providing additional support for Ms. Colucci's claim against Stockwell Properties.

Best regards,

Brian

Brian Rothschild | Financial Restructuring

Akin Gump Strauss Hauer and Feld LLP | 2029 Century Park East St. 2400 Los Angeles, CA 90067 |

direct: 310.728.3734 | direct fax: 310.229.1001 | [brothschild@akingump.com](mailto:brothschild@akingump.com) |

<http://www.akingump.com> | Google Voice all-purpose locator: 310.876.2299

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